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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 17 (d) of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS: SCIENCE AND ENVIRONMENT

Written statement* submitted by the International Indian Treaty Council, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201039 0*
ENG

The International Indian Treaty Council and Indigenous Peoples around the world view the uses of rapidly developing bio-technologies as being in direct conflict with international human rights norms and principles. They are a direct threat to Indigenous Peoples' Self- Determination, Cultural rights, and Right to Food, and raise grave concerns regarding issues of access to genetic resources and equitable benefit-sharing.

We are profoundly concerned about the wide ranging activities of the biotechnology industry pertaining to commercializing the Human, Plant and Animal Genomes. The proliferation of genetically modified foods and micro-organisms has direct impacts on food security, cultural rights and health of Indigenous Peoples.

Attempts to clarify the relationships between intellectual property rights and human rights have fallen far short of convincing Indigenous Peoples that their rights will be protected and their concerns addressed in this regard.

Challenges include the urgent need to reform current intellectual property rights systems and regimes to address issues of individual vs. collective rights, generational rights, spiritual and cultural concerns, and protection of traditional and collective knowledge, traditional uses and relationships.

Currently, international intellectual property regimes are incompatible with the needs of Indigenous Peoples and developing countries , perpetuating inequalities. Indigenous organizations have brought attention to the fact that patent requirements for life-forms reduce Indigenous Peoples' right to self-determination by reducing their ability to control their genetic and natural resources. The U.S. remains one of the only countries in the world that recognizes patents on life forms.

The U.S. patent office has opened the doors to the biotechnology industry, allowing entire species of plants, transgenic animals, and over 500,000 whole or partial genes to be patented. Under the U.S. system, basic biological resources are privatized, and are thus accessible only to those willing and able to pay royalty fees for access or research.

The right to adequate food and food security is directly threatened by genetic modification and patenting of seeds. The production of traditional food crops have been seriously compromised. In the US, diabetes, cancers, and hypertension have significantly increased among Indigenous Peoples because of the increasing scarcity of traditional foods and the dumping of junk food into our communities.

The appropriation of our lands and resources and the aggressive promotion of consumerist and individualistic Western culture through the use of advancing technologies continue to destroy traditional lifestyles and cultures. The result is environmental degradation, ill health, alienation, and high levels of stress manifested in high rates of alcoholism and suicides.

The theft and patenting of Indigenous Peoples' bio-genetic resources is facilitated by the Trade Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO). Some plants which Indigenous peoples have discovered, cultivated, and used for food, medicine, and for sacred rituals since time immemorial are already patented in the United States, Japan, and Europe.

A few examples of these are ayahuasca, quinoa, and sangre de drago in South America; Kava in

the Pacific; turmeric and bitter melon in Asia. Indigenous Peoples access to and control over their biological diversity, traditional knowledge and intellectual heritage are threatened by the TRIPs Agreement.

Article 27.3(b) of the TRIPs Agreement allows patenting of life-forms and makes an artificial distinctions between plants, animals, and micro-organisms, as well as between "essentially biological" and "non-biological" and "micro-biological" processes. Indigenous Peoples maintain that these life-forms and life-creating processes are sacred and indivisible, and should not become the subject of private property ownership.

The IITC and its affiliate organizations reiterate to this body that Article 27.3(b) of the WTO should be amended to categorically disallow the patenting of life-forms. It should clearly prohibit the patenting of micro-organisms, plants, animals, including all their parts, including genes, gene sequences, cells, cell lines, proteins, and seeds.

It should also prohibit the patenting of natural processes, whether these are biological or micro-biological, involving the use of plants, animals and micro-organisms and their parts in producing variations of plants, animals and micro-organisms. The TRIPS should ensure the exploration and development of alternative forms of protection outside of the dominant western intellectual property rights regime.

Such alternatives must protect Indigenous Peoples' knowledge, innovations and practices in agriculture, health care, and conservation of bio-diversity, and should build upon their methods, traditions and customary laws for protecting knowledge, cultural and intellectual heritage and biological resources.

Article 27.3(b) must be changed to insure that the protection offered to Indigenous and traditional knowledge, innovations and practices is consistent with the Convention on Biological Diversity (i.e. Articles 8j, 10c, 17.2, and 18.4) and the International undertaking on Plant Genetic Resources. It should allow for the right of Indigenous Peoples and farmers to continue their traditional practices of saving, sharing and exchanging seeds, and cultivating, harvesting and using medicinal plants.

It should also prohibit scientific researchers and corporations from appropriating and patenting indigenous seeds, medicinal plants, and related knowledge about these life-forms. The principles of prior informed consent and right of veto by Indigenous Peoples should be respected.

Indigenous peoples believe that the entire philosophy underpinning the WTO Agreements and the principles and policies it promotes contradict our core values, spirituality and world views, as well as our concepts and practices of development, trade and environment protection. Therefore we challenge the WTO to redefine its principles and practices toward a "sustainable communities" paradigm, and to recognize and allow for the continuation of other world views and models of development. (from the Indigenous Peoples' Seattle Declaration, 1999)

Terms such as "strategic raw materials" addressing the south and sub-tropics, where 80% of the bio-diversity is located, reflect a quest for acquisition of genes of plants, animals and micro-organisms which would be used to develop new commercial food resources. It is a fallacy to refer to the materials sought by "bio-prospectors" as raw, or in a primitive stage of development, since local farmers and Indigenous Peoples have improved and cared for them for thousands of years!

Recently, in Chiapas, Mexico a situation presented itself where Indigenous Peoples organized and prevented a U.S. government funded bio-prospecting project from continuing its efforts to control their sovereign genetic resources and knowledge. They demanded the suspension by Mexico of the International Collaborative Bio-diversity Group -Maya (ICBG-Maya). The ICBF-Maya was funded $2.5 million as a 5 year project aimed at the bio-prospecting of medicinal plants and traditional knowledge of the Mayan Indian peoples.

The project is led by the University of Georgia, in cooperation with a Mexican university research center, El Colegio de la Frontera Sur (ECOSUR), and Molecular Nature Ltd., a biotechnology company based in Wales, United Kingdom. The ICBF's self-stated goal are to promote drug discovery from natural sources, bio-diversity conservation, and sustainable economic growth in developing countries.

The umbrella organization for the 11 Indigenous organizations who opposed this intrusion, Consejo de Medicos y Parteras Indigenous Tradicionales de Chiapas, believes that the bio-prospecting project and the pharmaceuticals it seeks to discover will not ultimately benefit the communities that have managed and nurtured these resources for thousands of years. According to Sebastian Luna, a spokesperson for the Consejo, "the project explicitly proposes to patent and privatize resources and knowledge that have always been collectively owned. Besides being totally contradictory to our culture and traditions, the project creates conflict within our communities as some individuals, pressured by the grave economic situation, collaborate with the researchers for a few pesos or tools."

Mexico is the steward of the global maize diversity and is at risk of losing unique diversity of maize to genetic pollution. Mexican traditional maize, used and cared for the Indigenous Peoples over thousands of years, is already contaminated by genetically modified strains. The Mexican government has confirmed the contamination of at least in 15 communities in Central Mexico, but has taken no action to eliminate the source or to implement emergency measures to control the damage to the environment and food chain.

Even a low level of genetic contamination is highly significant since it is likely to multiply through pollen flow and spread further to other traditional varieties and wild relatives growing in the area, threatening crop diversity essential to pest and disease resistance, climatic and environmental variations.

IITC strongly supports the initiative by the UN High Commissioner on Human Rights to organize a fourth expert consultation on the right to food, with a focus on how WTO Article 27.3(b) functions contrary to the rights of Indigenous Peoples, and fails to make linkages with existing international human rights standards.

The IITC fully supports Commission Resolution 2001/71, April 25, 2001, approved by ECOSOC in July, requesting the UN Secretary-General to make proposals concerning proper coordination of activities pertaining to biological ethics and human rights throughout the UN system by establishing a Working Group of independent experts representing UNESCO, WHO, WIPO and other relevant UN bodies. This Working Group, which should also include representatives of Indigenous NGO's, would evaluate the implementation and address new developments pertaining to the Universal Declaration on the Human Genome and Human Rights.

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by the International Indian Treaty Council, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 0 3 9 2 *

ENG

The militarization of Indigenous lands was the direct cause of many human rights violations occurring throughout the world. The International Indian Treaty Council is extremely concerned about the role of nation/states in many of these often violent incidences where Indigenous Peoples are victimized, dislocated, or forced to defend what little resources are left for them and their families.

The IITC has recently received the following information from impacted communities and non governmental organizations. We urgently call the attention of the members of the Commission to these grave situations facing Indigenous Peoples.

In Guatemala, the National Coalition of Campesino Organizations (CNOC), including IITC affiliate Comite de Unidad Campesino (CUC), have presented a list of demands to the Guatemalan government that address concerns regarding the inefficiency of governmental institutions designed to address land conflicts and distribution, labor rights violators, and failure to comply with housing and rural development commitments made during the peace negotiation process.

The mobilization organizers have also demanded justice in recent cases of threats, attacks and murders of land rights activists. For example, last year Teodoro Saloj Panjoj, Sarbelio Ramos Hernandez and Eugenio Garcia have been assassinated in response to their community organizing for land rights. Many others have been attacked and threatened.

On September 27, 2001 security guards from the Las Quebradas plantation shot and killed Eugenio Garcia. Mr. Garcia was killed while walking to his field from his home in the village of Los Cerritos, Morales, Izabal in eastern Guatemala. Several witnesses, including 3 police officers, identified by name the assailant, a member of the plantation's private security force.

The IITC, and the CNOC are extremely concerned about the safety of this community. This was the second murder of a community member in eight months. On April 15, 2001 a member of the same community, Sarbelio Ramos Hernandez, was also ambushed, shot and killed while walking to town. There has been no serious legal investigation into his murder to date.

The IITC and CNOC are disturbed about apparent complicity of local authorities in repression against communities reclaiming their land rights. Three National Civil Police officers reportedly accompanied the plantation's private security force to the scene of the ambush against Mr. Garcia and then departed with the assailants! The police claim that they arrived at the scene to investigate an alleged robbery. However local witnesses state that they were instead accompanying the assailants.

In addition, community members claim that the Mayor of Morales has threatened community land activists. Though clearly identified by witnesses and despite the fact that an arrest warrant has been issued, the material author of the murder and his accomplices have not been detained. It has been reported that the assailants are still in the area.

For many years the families of Los Cerritos and other villages adjoining the Las Quebradas plantation have contested the land claims of various supposed owners of that plantation. Historically, the communities have always lived on and cultivated this land. During the 1950's they received title to the land.

The IITC requests that the Special Rapporteur on Terrorism and Human rights, Ms. Kalliopi K.

Koufa, focus attention on the critical situation of Indigenous Peoples in her second progress report in relation to broadening the concept of State and State-sponsored terrorism to include the concept of sub-State (Individual or privately sponsored) terrorism. There is an urgent need to address its role in the treatment of Indigenous peoples. In recent decades, open conflicts between "non-State" groups such as Indigenous peoples, versus state as well a privately funded paramilitary groups have increased in frequency as well as ferocity.

In the meantime, negotiated peace accords are not being implemented to protect the rights of Indigenous Peoples who continue to be detrimentally impacted by these conflicts. In some cases on-going peace negotiations have stalled. Recommendations to States for the realization of just and lasting peace in key conflicts in Indigenous Peoples' territories are as follows:

1. Implement fully the Chittagong Hill Tracts Accord of 1997 between the Parbatya Chattagram Jana Samhati Samiti and the Government of Bangladesh;

2. Implement fully the 1996 Guatemala Agreement on a Firm and Lasting Peace between the Unidad Revolucionaria Nacional Guatemalteca (URNG) and the Government of Guatemala, particularly the Agreement on the Identity and Rights of Indigenous Peoples;

3. Implement and reinvigorate the San Andres Accord between the EZLN (Zapatistas) and the government of Mexico;

4. Resume the stalled peace negotiations between the National Democratic Front-Communist Party of the Philippines-New Peoples' Army and the Government of the Philippines;

5. Resume the peace negotiations between the Moro Islamic Liberation Front and the Government of the Philippines;

6. Overcome the setbacks in the ongoing peace talks between the National Socialist Council of Nagaland and the Government of India.

In Algeria, the paramilitary's recent brutal repression of the Amazigh peoples (also known as Berbers) have not gone unnoticed by Indigenous communities of the world. The IITC calls for your attention to the plight of Amazigh Peoples, the original inhabitants of North Africa, who number more than 25 million, with the majority living in Morocco and Algeria. Romans, carthaginians, Vandals, Byzantines, Arobs, Spaniards, Turks and the French have successively invaded and occupied North Africa.

Well before the North African countries of Morocco and Algeria gained their independence from France, the Amazigh (Berber) segment of their population were subjected to discrimination and intimidation.

Since April 18, 2001, the Kabylia region of Algeria has been subject to bloody and fierce repression, reportedly by the Algerian paramilitary and police force. So far, over 90 unarmed youth, including high school students and children, were murdered by the Algerian paramilitary gendarmes. Thousands have reportedly been injured and tortured. 131 are missing. Most were shot in the back with real and explosive bullets.

These actions occurred following several provocations by the gendarmes prior to and during

peaceful demonstrations, after a high school student, Massinissa Guermah, was murdered with a hail of machine-gun fire by the gendarmes while in custody, on the eve of the commemoration of the Amazigh Spring.

The violent tactics of the Algerian government are leading to social unrest, ethnic cleansing and the destabilization in the North Africa region. Berber-speaking villagers report that they are being subjected to racist treatment, and punitive expeditions by the security forces. As a consequence, entire villages are being abandoned by their inhabitants to escape this situation.

Ms. Helene Flautre, deputy and member of the European parliament delegation visiting Algeria during May 18-23, 2001 while on official visit, met with both high officials of the regime and the young protesters in Tizi-ouzou. Ms. Flautre also met the families of the victims of the Kabylia demonstrations, and to assemble testimonies from the injured people there. The meeting took place at the Human Rights and Citizenship Office.

At the end of the meeting, Helene Flautre said to the press: "These testimonies will serve to present what I understand is happening in Kabylia, present an eyewitness of the violence there, and clarify that the official discourse based on self-defense is wrong. There are a plethora of concrete events and testimonies invalidating such discourse and that the situation is not that of self-defense. There is a great will to kill and killings happened very far away from the police barracks. The claim of self-defense essentially becomes erroneous after such testimonies."

Retired general Khaled Nezzar (considered to be one of the top decision-makers in the country) was quoted as responding "When the gendarmes feel threatened, the law authorizes them to shoot. But public opinion doesn't like real bullets. We should perhaps start thinking of using rubber bullets."

The IITC calls on the Algerian government to establish immediately an independent and impartial commission of inquiry to investigate the thousands of human rights violations and abuses committed in Algeria since 1992 by the security forces, state armed militias and armed groups.

Finally, in Brazil, the Pataxo Ha-Ha-Hae now wait for a final decision from the justice of the Supreme Federal Court (STF), Nelson Jobim. Since 1982 the IITC has reported to the Commission on Human Rights on the situation of the Pataxo Ha-Ha-Hae, who have suffered nearly 20 years of conflict and displacement by gold miners and land grabbers, several court cases, the deaths thirteen of their leaders while defending their ancestral territories in the southern Bahia region against invasion and destruction by the miners and farmers.

It is the desire of the Pataxo Ha-Ha-Hae that the Brazilian Supreme Federal Court to issue a decision on an Action to Nullify Title Deeds to farms that encroach upon their lands. The IITC appeals to the UN Special Rapporteur on Indigenous Issues to review the case, monitor the process, and to assist in bringing about the long awaited demarcation of Pataxo Ha-ha Hae territories.

For all our relations.

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (c) and (e) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: FREEDOM OF EXPRESSION AND RELIGIOUS INTOLERANCE

Written statement* submitted by the International Centre for Human Rights and Democratic Development (Rights & Democracy), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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GE. *0020104 49*

ENG

The situation in Vietnam

Repression of freedom of opinion and expression, freedom of worship, and arbitrary detention of human rights defenders

1. Vietnam was visited by the Working Group on Arbitrary Detention in 1994, and by the Special Rapporteur on freedom of religion or belief in 1998. In his 1994 report, Mr. Louis Joinet criticized Vietnam's judicial system and recommended transparency and the rule of law. Mr. Abdelfattah Amor acknowledged in 1998 the religious persecution in Vietnam and recommended freedom of worship. No implementation has been made of these Special Rapporteurs' recommendations.

2. Vietnam is a signatory of the International Covenant on Civil and Political Rights as well as that on Economic, Social and Cultural Rights. Yet, it is repressing severely its citizens' fundamental rights, particularly freedom of worship, freedom of opinion and indigenous peoples' economic and cultural rights. Despite protests from the international community, the Vietnamese authorities continue to use arbitrary detention to stifle dissident voices, as in the application of the 31 / CP Administrative Detention Directive, issued in April 1997, allowing security officials of village levels to detain, without trial, up to 2 years, individuals discharged from hard labour camps or suspected of «threatening national security».

3. Article 69 of Vietnam's Constitution recognizes freedom of opinion, expression and association for all citizens, and article 70 recognizes religious freedom. In reality, Vietnamese citizens have been denied these freedoms in many ways:

a) The Vietnamese authorities censor its citizens' communications such as telephone, mail, and access to the internet;
b) Vietnam does not allow a free press. There are about 500 newspapers in Vietnam, but none of them are private. There is no independent publishing house. All radio and television broadcasting belong to the State;
c) Individuals who have raised their voices to demand freedom of expression, free elections, and democracy, have been arrested, imprisoned, or subjected to defamation campaigns in the media, and their families are subjected to harassment and «punishment».

4. Cases in the following list illustrate the currently ongoing persecution of human rights defenders in Vietnam:

1. Reverend Thaddeus Nguyen Van Ly, a catholic priest of An Truyen diocese in Hue city, is serving his 15-year sentence in hard labour camp Ba Sao, Nam Ha province after an unfair closed trial on October 19, 2001. This is the third time he has been imprisoned for peacefully campaigning for religious freedom in Vietnam. He founded the Interfaith Council in Vietnam with 3 other religious leaders in February 2001, and has persistently protested against religious intolerance for the last 26 years.

2. Dr. Nguyen Dan Que, a physician, is now under house arrest in Ho Chi Minh city, after 18 years of imprisonment for demanding free elections, political multiparty and respect for human rights.

3. Writer Ha Sy Phu now under house arrest in Dalat city – the second time – after imprisonment in 1995 for writing essays criticizing marxism and communism.

4. Most Venerable Thich Huyen Quang, 82 years old, Patriarch of the banned Unified Buddhist Church of Vietnam, under «administrative detention» in Nghia Hanh Pagoda, Quang Ngai province for the last 21 years, because he protested the interference of the State in religious affairs.

5. Venerable Thich Quang Do, second leader of the Unified Buddhist Church, now in detention at Thanh Minh monastery in Ho Chi Minh city, because he protested the detention of the Patriarch Thich Huyen Quang. Released from hard labour camp in 1998, he keeps writing letters to the Vietnamese government and Western democratic governments to denounce religious persecution in Vietnam.

The lists of cases documented by Amnesty International, Pen International and Human Rights Watch are very long, and the victims mentioned above are but tips of the iceberg.

Indigenous Peoples' rights violations is illustrated by the persecution of ethnic minority members of the northern and central highlands

5. The large-scale demonstrations in February 2001 in the provinces of Gia Lai, Daklak, Lam Dong were a reaction to the long standing official policy to displace ethnic minority tribes from their homeland by confiscating their ancestral lands and prohibiting the practice of their religions (protestantism and catholicism).

6. Protesters have been subjected to imprisonment, torture, their families have been harassed and threatened. Many thousands tried to seek asylum in Cambodia but most of them were captured by the Vietnamese authorities. Human Rights Watch and Amnesty International have documented and protested the forced repatriation of these refugees by the Vietnamese authorities and the Cambodian government.

7. On September 26, 2001, 14 protesters from the Jarai and Ede tribes were sentenced to lengthy imprisonment terms (6 to 12 years), after a one-day closed trial.

RECOMMENDATIONS

Vietnam should take steps to halt the discrimination against political dissidents, religious believers and members of minority groups.

1. We call upon the U.N. Commission on Human Rights to urge Vietnam to stop arbitrary detention. In particular, Vietnam has to apply international standards in the judicial system and revoke the 31 / CP Administrative Detention Directive and release from detention all victims of persecution in the above-mentioned list, and other peaceful citizens who demand recognition of their basic rights by the Constitution of Vietnam.

2. We call upon the Special Rapporteur on freedom of religion or belief to undertake a follow-up visit to Vietnam and call upon the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on human rights and fundamental freedoms of indigenous peoples' and the Special Representative of the Secretary-General on the situation of human rights defenders. to visit Vietnam and investigate the human rights situation.

International media and human rights NGOs' reports need to be confirmed by U.N. Special Rapporteurs in order to educate public opinion on Vietnam's human rights record and help reduce the persecution of the Vietnamese people by their own government.

3. We call upon the U.N. High Commissioner for Refugees to seek a more far-reaching solution to the exodus of ethnic minority members from Vietnam, mainly by urging Vietnam to stop discrimination against ethnic minorities, to respect their economic rights, and to stop the persecution of montagnard religious leaders and believers. Monitoring of the indigenous people's conditions in Vietnam by the United Nations would be important to prevent the recurrence of persecution.

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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by the International Centre for Human Rights and Democratic Development (Rights & Democracy), a non-governmental organization in special consultative status

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GE. *0020104 52*

ENG

The Situation in China

1. During the past year, gross violations of human rights have persisted in the People's Republic of China. China has used the events of September 11 to justify renewed crackdowns in its western regions particularly in Xinjiang (East Turkestan). Meanwhile, a renewed campaign against organizations and movements which the Party views as a threat is supported by a number of new regulations which allow the government to deny rights while claiming that it is merely abiding by the "rule of law".

2. China has yet to adequately live up to its commitments under the various agreements it has already ratified, specifically the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. There is no means of recourse for the victims of human rights violations perpetrated by the State on its citizens. China has not yet ratified the UN Covenant on Civil and Political Rights signed in 1999.

3. The terms of China's recent accession to the World Trade Organization (WTO) include the provision of technical assistance programs related to a variety of legal reforms such as the development of administrative systems governing the uniformity of domestic regulatory measures and the transparency of legal and judicial processes. A timeframe for implementation of the WTO agreements is integrated into the accession protocol itself which also sets out specific benchmarks for compliance. The WTO's binding dispute settlement mechanism will determine China's conformity with WTO rules within a multi-lateral process which includes binding decisions and enforcement measures.

4. On the other hand, the Memorandum of Understanding signed in November 2000 between the High Commissioner for Human Rights and the People's Republic of China on the issue of China's human rights compliance, fails to identify any timeframe for progress. The MOU does not include practical outputs or a methodology for monitoring the implementation of reforms. China continues to reject international processes related to its human rights record, including censure at the Commission on Human Rights, maintaining that such action is interference in its "internal affairs". One year into the technical assistance programme administered by the Office of the High Commissioner for Human Rights, violations of human rights in China continue unchecked and without hope of recourse for their victims.

5. While the number of bilateral human rights dialogues with western governments has grown and dialogue sessions continue to take place at regular intervals, the policy of quiet diplomacy has disappointed those who look beyond institutional reforms towards real improvements on specific human rights practises. Moreover, following the April 2001 meeting in Switzerland of all dialogue governments, no collaborative strategy or work plan has emerged and the bilateral dialogues themselves have floundered due largely to inadequate transparency or public accountability as well as post-September 11 imperatives.

6. Despite persistent reports of torture in prisons, a request by the UN Special Rapporteur on Torture to visit China has been de-railed by official objections to the terms of reference of his visit. Moreover, China's third report under the Convention Against Torture failed to acknowledge the serious nature of the problem of torture in China. The report did not propose any appropriate measures towards implementation of China's obligations under the Convention. Despite extensive documentation of torture in China's prisons, the inability of the international community to influence change either through UN mechanisms or via the bilateral dialogues means that those who, in their official capacity engage in acts of torture in China, do so with complete impunity.

7. In order to control the flow of information, the Government of China has shifted its policy of censorship towards one of surveillance and punishment. In November 2000, the Ministry of Public Security launched its "Golden Shield" project, to promote the adoption of advanced information and communication technology for the purpose of strengthening central police control. China's Golden Shield is envisioned as a database-driven remote surveillance system – offering immediate access to registration records on every citizen in China. Much of the advanced technology which enables China's Golden Shield has come from western telecommunications corporations despite evidence that it is being used to suppress the rights to privacy, opinion, expression and association of the Chinese people including democracy and social justice activists.

8. During May 2001, the Government of China signed an agreement with the International Labour Organisation (ILO) permitting the ILO to open an office in Beijing and to intervene on workplace issues such as job creation, social security reform, health and safety, collective bargaining and dispute resolution procedures. However, Beijing still refuses to respect the core principle of the right to organize an independent trade union, despite its obligations under the ILO's Declaration on the Fundamental Principles and Rights of Work. Moreover, freedom of association is guaranteed by the Chinese Constitution itself.

9. Trade unionists continue to suffer denial of their right to freedom of association and the right to form independent trade unions. Arrest of labour activists is widespread and sentences of several years are common for efforts to organise workers outside of the state-sanctioned process. In December 1999, labour lawyer Xu Jian of Baotou City in Inner Mongolia was arrested and later charged with attempting to overthrow the state and the socialist system. The charges resulted from Xu's efforts to educate local workers about China's labour laws and his efforts to represent workers who had not received their due wages from state-owned enterprises. Xu was sentenced to four years, but is reported to be in poor health and denied access to appropriate health care while in prison.

10. Under the guise of a new "Western Development Strategy" (WDS), Beijing has launched a campaign to control political dissent in its western regions, including Qinghai, Gansu, Sichuan, Yunnan, Shaanxi as well as Uighur, Tibetan and Hui Autonomous regions. Described by President Jiang Zemin as a means to "strengthen national unity, safeguard social stability and consolidate border defence", the WDS is viewed by

observers as a double-edged sword. While increased central control over the western economy will facilitate political and military control of the restive region, the exploitation of untouched natural resource reserves will underpin increased growth and prosperity for industrialised but resource-poor eastern provinces. Foreign direct investment, undertaken in the name of "development" but without consideration of human rights impacts, threatens the economic, social and cultural rights of China's poorest and least–developed provinces.

11. In Tibet, Chinese authorities continue to suppress "splittist" activities and exert control over religious activities. After the events of September 11, authorities launched a new "Strike Hard, High Pressure" campaign, targeting "separatists, terrorists and religious extremists" and arresting several hundred individuals including monks, nuns and intellectuals. Gendhun Choekyi Nyima, the 12 year old Tibetan prisoner recognized by the Dalai Lama to be the Panchen Lama, has been held in incommunicado detention since May 17, 1995. Efforts by the international community to obtain permission to visit the child, remain unsuccessful.

12. Political and religious repression in Eastern Turkestan (Xinjiang) has escalated in the past year, particularly after the events of September 11. Chinese authorities have arbitrarily arrested thousands, sentenced them to harsh prison sentences without due process, closed religious centers, schools and mosques and limited the activities of Uighur-owned businesses. Public security officials have reinforced their "iron fist" campaign against what they term "religious fundamentalists, splittists and terrorists". In the absence of due process, public sentencing rallies have become the norm, even when the death penalty is applied. According to the vice-president of Xinjiang's Higher People's Court, Lu Qifa, these sentencing rallies are often attended by more than 300,000 people. By May 10, 2001, according to official accounts, the authorities were prosecuting 3,701 cases and had smashed 185 "gangs," "thus forcefully shaking the arrogance of the criminal elements."

13. Discrimination against the practice of Falun Gong by Chinese authorities has escalated in the past year to the point where officials, up to and including President Jiang Zemin, are openly characterizing Falun Gong practitioners as "terrorists". In his presentation to a three-day national conference in December 2001, Jiang said that the Falun Gong was not a religion but an "evil cult", with some members practising violent and terrorist acts. It is estimated that 25,000 practitioners are now languishing in labour camps, prisons or mental hospitals across China.

RECOMMENDATIONS

1. The Commission on Human Rights should adopt a resolution on the situation of human rights in China, East Turkestan and Tibet, with a view to ending specific human rights abuses as outlined above.

2. The Commission on Human Rights should urge the Government of China to ratify the Convenant on Civil and Political Rights.

3. The Commission on Human Rights should take steps to ensure that the Government of China honours the terms of reference for country visits by its Special Rapporteurs and that the visit to China by the Special Rapporteur on Torture proceeds without further delay.

4. The Commission on Human Rights should encourage the Government of China to honour its obligations under the Right to Development and the International Covenant on Economic, Social and Cultural Rights, including the right to self-determination.

5. The Commission on Human Rights should appoint an independent delegation of eminent persons to petition Chinese authorities for permission to visit the 12 year old Tibetan child, Gendhun Choekyi Nyima, for the purpose of ascertaining his safety.

6. The Commission on Human Rights should make a statement of principle regarding legitimate struggles for human rights and democracy and the protection of human rights defenders in the post September 11 context.

7. The Commission on Human Rights should press Chinese authorities for restraint in their response to Falun Gong practitioners. Specifically, Chinese authorities should guarantee that the right to a fair trial is upheld for all citizens of China including Falun Gong practitioners.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by the International Centre for Human Rights and Democratic Development (Rights & Democracy), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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*/ This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201045 5*

ENG

The Situation in Colombia

1. Despite strong recommendations once again by the United Nations High Commissioner for Human Rights to the Colombian Government in March 2001, the human rights situation in the country continued to worsen. The Inter-American Human Rights Commission, in its December 2001 visit to the country, noted that the situation of paramilitary activity, problems caused by impunity, and increasing violations of International Humanitarian Law by insurgent forces, has gravely deteriorated in a spectacular way.

2. The degradation of the internal armed conflict and its effects on the civilian population; the increase in human rights violations, including civil and political rights, as well as economic, social and cultural rights; the continuation of direct and indirect aiding and abetting of paramilitary activities by members of the Armed Forces; the lack of protection of the basic rights of internally displaced people; and the implementation of a predominantly military response to drugs trafficking through Plan Colombia and the Andean Initiative; remain major concerns of Rights & Democracy at the beginning of 2002.

Degradation of the Internal Conflict

3. Despite positive efforts by the Pastrana Government to continue in its dialogue with the major insurgent organisations, the Armed Revolutionary Forces of Colombia (FARC) and the National Liberation Army (ELN), with the goal of reaching a negotiated political settlement to the internal armed conflict, the setbacks have been many.

i) The immediate uncertainty regarding the continuation of dialogue with the FARC and of the demilitarised zone in Caguan, pending the insurgents' demands for evident and effective State control over the growth and presence of the paramilitary United Self Defence Groups of Colombia (AUC), once again threatens the possibility of full suspension of the peace talks and further escalation of the conflict.

ii) After several months of silence, talks with the ELN moved forward positively in the last six weeks of 2001. Despite encouraging signs of /willingness to compromise on both sides, sabotage by the AUC and by paramilitary-backed civilian organizations continues to thwart the implementation of the National Convention, proposed by the ELN as a process to facilitate the participation of all sectors of society in discussing the content of an eventual Peace Accord and the construction of a participatory democracy. To date the government has not indicated how it will resolve this impasse.

4. Meanwhile, the armed conflict raged on during 2001, escalating levels of human degradation and intolerable suffering within the unarmed civilian population. The paramilitaries continued to perpetrate an increasing number of massacres, threats, assassination, displacement, and forced disappearances of civilians, including human rights workers, trade unionists, indigenous, academics, journalists, and community workers. In many instances they were assisted directly or indirectly by members of the Armed Forces. A rate of almost 100% impunity meant few were prosecuted for gross human rights violations.

5. Insurgent groups stepped up kidnappings and threats of extortion, selective assassinations of civilians, the use of military tactics violating international humanitarian law (gas canisters packed with gunpowder and shrapnel), and the destruction of infrastructure (hydro-electric towers, oil pipelines).

The forced recruitment of minors by both the guerrillas and the United Self-Defence Forces of Colombia (AUC) is of grave concern.

6. To date, the Colombian State has been ineffective in preventing attacks from all parties in the armed conflict and in protecting threatened civilians. Detailed reports of imminent paramilitary attacks on civilians have consistently been provided to the appropriate authorities but subsequent preventive action was seldom taken. Massive unarmed civilian responses during the last weeks of 2001 to the threat of armed action by the guerrillas, especially in indigenous communities, have not received adequate protection from the Government.

Deterioration of the Human Rights Situation

7. According to recent reports, the number of victims of political violence and deaths in combat rose to almost 20 a day. The paramilitary, especially the AUC, are deemed responsible for 78% of human rights violations.

8. While the Colombian State has made efforts to apprehend and prosecute members of the paramilitary and members of the Armed Forces accused of collusion with them, a much more decisive response is required if a peace process guaranteeing basic human rights is to move forward. In the meantime, membership of the AUC is increasing, as the latter imposes its *modus operandi* as a new way of participation in the political process.

9. The targeted assassination, forced disappearances of and threats to human rights workers continued to affect the capacity of civil society to defend basic human rights. Indigenous leaders, particularly, have been the targets of all of the armed actors, despite the assertions of the former of neutrality and autonomy. Journalists, Afro-Colombians, academics, and community leaders have been increasingly targeted. More than 150 trade unionists were assassinated and many forcibly displaced after receiving death threats during 2001, according to reports by the ILO.

10. The UN Special Rapporteur for Violence Against Women, during a recent visit to the country, noted with alarm the persistent and extended use of sexual violence against women as a weapon in the internal armed conflict. As the majority of the internally displaced population, women bear the responsibility for the survival of their families in conditions of great insecurity. Those who choose to organize are also subject to selective assassinations, to kidnapping and threats.

11. Colombia is the kidnapping capital of the world. This practice, used increasingly by the guerrillas to finance their activities and by criminal gangs, causes further degradation of the conflict and untold suffering not only to victims but also to family and community members.

12. The issue of impunity in relation to Armed Forces personnel remained a serious concern, despite the new Military Code. Military judges frequently continued to ignore a Constitutional Court decision requiring that cases involving Armed Forces personnel associated with gross human rights violations be tried in civilian courts.

Internal Displacement1

13. During 2001, an increasing number of unarmed civilians, mainly women and children, were internally displaced. Many are "hidden from view" in the slums of large urban centres, other are barely surviving in makeshift refugee camps in Colombia. Displaced persons who have returned to their place of origin or to other parts of the countryside, under government-sponsored programs, continue to be threatened and many forced to leave once again. The right of "peace communities" to live autonomously, as neutral parties vis-à-vis the armed actors in the conflict has not been respected.

14. Without appropriate documentation, the civil and political rights of displaced persons are frequently ignored, a situation that particularly affects women. State resources for shelter and sustenance have not provided even minimally for basic needs, and Law 387 of 1997, which prescribed a comprehensive assistance program for displaced people, has not been implemented.

15.During 2001, the number of Colombian men, women, and children forced to cross borders to Panama and Ecuador, in particular, increased significantly, as the Colombian conflict took on increasingly regional dimensions, in the wake of the implementation of Plan Colombia.

Drugs Trafficking and the "Andean Initiative"

15. The intensity of Colombia's conflict is further exacerbated and polarised by the infusion of military assistance from the US government, ostensibly to curtail drugs trafficking. Aerial fumigation of coca and poppy crops, as a major component of US strategy, substantially increased internal displacement, refugee flows to neighbouring

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1 Forced displacement or forcible displacement, sounds strange in English – forced or forcible more often being used with disappearance. I suggest 'involuntary internal displacement'.

countries, intensified levels of combat, and regionalization of the conflict during 2001. Although the US Congress originally made its "drug war" military aid dependent upon improvements in human rights protection, this has not happened, and an additional military package under the rubric of the Andean Initiative further fuelled the level of military activity in Colombia, reducing the possibility for successful peace negotiations.

Economic, Cultural, and Social Rights

16. The UN Committee on Economic, Social and Cultural Rights, in its study of the report of the Colombian government expressed its concerns regarding rising poverty and increasing unemployment, as well as the lack of access to social security for 43% of the population. Health, housing and education conditions are dramatically deteriorating, due to the reduction of governmental subsidies to these basic services, deepening the level of poverty.

Indigenous rights

17. Indigenous peoples have seen their lands occupied or greatly reduced, without their agreement, by mining, timber and petroleum companies. Their resistance has brought kidnappings, assassinations, expulsion from their homes and communities. Leaders have been targeted, accelerating the pace of the gradual extinction faced by four indigenous peoples.

RECOMMENDATIONS

1. Rights & Democracy urges the Commission to assist and pressure the Colombian government to combat paramilitarism effectively and to dismantle it completely, and to prosecute those who lead, organize and finance it, including public servants, and especially members of Colombia's Armed Forces.

2. The Commission should likewise support the Colombian Government's attempts to punish those responsible for violation of international humanitarian law.

3. The Commission is called upon to effectively support concrete efforts by the Colombian government to strengthen and broaden the search for a negotiated political settlement to the internal armed conflict; to urge the government and insurgent groups to reach a verifiable agreement to respect human rights and international humanitarian law; and to respond to the efforts of Colombian society in general to strengthen movements for lasting peace with justice.

4. The Commission should reaffirm the importance of the United Nations Office in Colombia of the High Commissioner for Human Rights; the Colombian government must be assisted and encouraged to implement recommendations from the High Commissioner's Reports, as well as those of Special Rapporteurs, members of the Inter-American Human Rights Commission who visited the country during 2001, as

well as the recommendations of the UN Committee on Economic, Social and Cultural Rights of November 2001.

5. The Commission should ensure that the Colombian government designs and implements a comprehensive and gender-sensitive plan to respond to the basic rights of displaced people.

6. The Commission should use its good offices to pressure the United States government to effectively condition military assistance to Colombia to ensure its aid does not benefit military units that commit abuses, either directly, or by aiding and abetting the paramilitary. The human rights conditions attached to the aid package must be strictly adhered to, periodically evaluated for compliance by Colombian authorities, who should make public their observations.

7. The Commission is called upon to support political rather than military responses to the problem of drugs trafficking in Colombia. The exclusive use of force to reduce the production and trafficking of illicit drugs has proven illusory. The implementation of political and social transformations providing viable alternatives, including manual eradication as proposed by indigenous groups and peasant communities, genuine agrarian reform, is essential in reducing rural acreage dedicated to illicit drug production.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by the International Centre for Human Rights and Democratic Development (Rights & Democracy), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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GE. *200201045 7*

ENG

The Situation in Myanmar

1. In the year 2001, the State Peace and Development Council (SPDC), Burma's ruling military junta, is still holding on power by the use of force. Gross violations of international human rights and humanitarian law continued. Reported human rights violations included: extra-judicial, summary and arbitrary executions, forced disappearances, rape, torture, inhuman treatment, mass arrests, forced labour, forced relocation, and denial of freedom of assembly, association, expression and movement.

2. The SPDC continues to ignore the outcome of the election of 27 May 1990 and Daw Aung San Suu Kyi, whose political party, the National League of Democracy (NLD) won over 80% of the seats, remains under a *defacto* house arrest.

3. In October 2000, a first meeting between the UN Secretary-General Special Envoy for Burma, Mr. Ismail Razali, the Secretary-General of the NLD, Aung San Suu Kyi, and representative of the SPDC, Senior Gen. Than Shwe, took place. This meeting was followed through the year 2001 by a series of secret talks between Aung San Suu Kyi and Senior Gen. Than Shwe.

4. Following these talks and the first visit of Special Rapporteur, Mr. Paulo Sergio Pinheiro, the SPDC authorities released several political prisoners throughout the year. However, the vast majority of those releases were not long-term detainees. The majority of them had not been officially charged and those who were serving a prison term were in fact already due to be released.

5. Hundreds of political prisoners still remain in jail. The leader of the students movement of 1988 and winner of the 1999 John-Humphrey Freedom Award, Min Ko Naing, has already served the maximum term of his sentence, but is kept in jail, under the commonly used Article 10 (a) of the 1975 State Protection Act.

6. The SPDC continued to reinforce its rule through a pervasive security apparatus controlled by military intelligence. Press censorship continued to be strictly enforced. Ownership of fax machines and computers as well as access to the Internet without government permission is punishable by a prison term of seven to 15 years.

7. The SPDC assigns high and growing budgets for military spending while the allocation of public resources for health, education and human development are kept extremely low. The World Health Report 2000 ranks Burma's overall performance second-to-last in the world – 190th out of 191.

8. Military sexual slavery, especially against ethnic women, was common. SPDC soldiers raped women when they are detained for forced labour or "portering" or under the pretext of forced marriage. These practices constitute a violation of the Slavery Convention to which Burma became a party on 18 June 1927.

9. As a counterinsurgency measure, forced relocation of villagers in ethnic minority areas continues. After relocation, soldiers frequently burn homes, uproot crops, loot belongings left behind and lay landmines around the villages. Relocation sites become

recruitment pools for forced labour, who are obliged to transport military equipment, and munitions, act as minesweepers, and work on infrastructure projects.

10. SPDC has not met its obligations under Convention No. 29 that the country ratified in 1955. Despite issuing Order 1/99 (making forced labour illegal), SPDC did not demonstrate the political will to eradicate forced labour and to comply with the recommendations of the ILO Commission of Inquiry which found that forced labour in Burma was "widespread and systematic". Order 1/99 has not been publicly announced on the radio, television or in newspapers as other laws and orders are being normally disseminated. SPDC is now using verbal orders, instead of using written orders, to conscript forced labour workers. In addition, since August 1, 2001, SPDC officials at the township/village are asking households to sign a declaration that they have never been conscripted for forced labour.

11. The country is facing a humanitarian crisis. The consolidation of the Burmese Army control over their border states through forced relocations has a direct impact in creating a huge number of internally displaced peoples (IDP) and refugees. Hundreds of thousands of IDPs are hiding in the jungle or living in poor and harsh conditions at SPDC relocations sites. Some of them manage to escape and become new refugees in neighbouring countries.

12. According to Landmine Monitor Report 2001, 9 out of 14 states and divisions in Burma are mine-affected. While the number of landmine victims in Burma is unknown, Landmine Monitor estimated that there were approximately 1,500 new victims in 1999 alone. The Committee Representing the People's Parliament (CRPP) has already endorsed the Mine Ban Treaty.

RECOMMENDATIONS

The Commission on Human Rights should adopt a resolution on the situation of human rights in Myanmar that:

1. Not only welcomes the efforts of the UNSG Special Envoy for the continuation of talks between SPDC and Aung San Suu Kyi but should also establish minimum requirements to be implemented within a given timeframe which will facilitate the evaluation of the talks. These requirements should include:
   - a joint statement of SPDC-NLD informing the public on the progress of the talks,
   - to allow free movement of Aung San Suu Kyi and other political leaders
   - liberation of all political prisoners
   - inclusion of representatives of ethnic minorities, etc.

2. Calls on the SPDC to eradicate the practice of forced labour and to allow the ILO to fully monitor the implementation of Order 1/99 in the country;

3. Calls on the SPDC to ratify the 1997 Mine Ban Treaty.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by the International Centre for Human Rights and Democratic Development (Rights & Democracy), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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GE. *0020104604*

ENG

The Situation in the Democratic Republic of the Congo

1. The human rights situation in the Democratic Republic of the Congo (DRC) has continued to deteriorate severely since the 57th session of the UN Commission on Human Rights, partly because the war that begun in August 1998 persists. The peace process, with its call for inter-Congolese dialogue as part of the Lusaka cease-fire agreement, and the deployment of a Phase III of the UN observer mission in Congo (MONUC) has done nothing to change the situation.

2. The slow progress of inter-Congolese political negotiations, ongoing fighting, particularly in the North-East of the DRC, delayed withdrawal of foreign forces, and disconcerting information on the continued buildup of armed troops cause concern over an increase in the fighting and in massive human rights violations.

3. The report presented to the UN General Assembly by Ms. Iulia A. Motoc, Special Rapporteur on the human rights situation in the DRC, as well as her current report to the 58th session, corroborate the analyses of several Congolese human rights organizations, our partners in the DRC.

4. The civil and political rights situation is as dramatic in the government-controlled territories as in those occupied by the RCD, MLC, and RCD-ML rebel forces supported by Rwanda and Uganda.

- Resistance and civil disobedience by the population of South and North Kivu to the Rwandan and Ugandan occupation forces are continually repressed through incessant harassment of leaders of the church and other civil society organizations, arbitrary arrests, even forced disappearances and arbitrary executions, as well as terror tactics in rural areas;
- The Kinshasa government persists in maintaining a military court criticized by human rights organizations because it tries both military personnel and civilians, and applies the death sentence in the form of summary executions;
- The Kinshasa government continues its practice of arbitrary arrests and arbitrary obstacles to freedom of movement for certain political or civil-society leaders. This is true despite the welcome liberation of several political prisoners and prisoners of conscience, as well as formal measures aimed at liberalizing the political arena.

5. Overall, economic and social rights are not respected. The social and economic situation remains catastrophic throughout the country. In government-controlled territory, the scant resources available are unfortunately channeled toward the war effort. Workers' salaries are not paid regularly, the cost of living has increased, health care services are inaccessible, public health care infrastructure facilities are obsolete and far from universal. The infant mortality rate has increased due to malnutrition and lack of treatment for mild diseases. Endemic diseases have cropped up again in areas where they were previously under control. There has been a recorded increase in the spread of HIV and AIDS cases. The school system no longer operates at full capacity.

6. The occupied territories have witnessed the appearance of a parallel tax system, as well as a system of organized pillaging of natural and economic resources by smuggling networks. According to Congolese organizations, whose statements have been corroborated by the recent report of UN experts on illegal exploitation of natural resources, these new networks profit neither the population of the DRC nor the populations of neighbouring countries involved in the war. The wartime economy only profits a handful of civilian and military individuals who control the new smuggling rings while the war lasts.

7. Hundreds of thousands of persons have been displaced by the war to areas that are inaccessible to humanitarian organizations. The fields are neither cultivated nor maintained, and foodstuffs are not sent to population centres. This has led a number of international humanitarian organizations coordinated by the UN to define the situation as a humanitarian catastrophe in several areas of the country.

8. Human rights organizations are of the opinion that the war crimes and crimes against humanity, as well as the violations of international humanitarian law committed during this war result partly from the tacit impunity granted by the international community to those who committed and ordered massive violations and crimes during the AFDL (Alliance des forces démocratiques pour la libération du Congo) war of 1997-98.

9. At its 57th session, the UN Commission on Human Rights nevertheless reappointed an International Commission of Inquiry made up of three members, the Special Rapporteur for the DRC, the Special Rapporteur on Extrajudicial Executions, and a member of the Working Group on Forced Disappearances. However, the Commission has made no progress in its inquiry given the situation of ongoing war.

RECOMMENDATIONS

Rights & Democracy requests that the Commission on Human Rights:

1. Renew the mandate of the Special Rapporteur for the Democratic Republic of the Congo;

2. Reiterate the mandate of the International Commission of Inquiry into massive violations in DRC during the 1996-97 war, provided for in Commission on Human Rights resolution 2001/19, extending it to cover massive human rights violations and crimes against humanity committed during the current war, particularly in the provinces of South Kivu, North Kivu and the eastern province, with the aim of bringing the perpetrators to justice;

3. Contemplate having the United Nations Security Council set up an ad-hoc international criminal tribunal for the DRC.

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INDIGENOUS ISSUES

Written statement* submitted by the International Centre for Human Rights and Democratic Development (Rights & Democracy), a non-governmental organization in special consultative status

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GE. *200201046 3*
ENG

Indigenous Rights: Time is Running Out!

1. In December 1993, the General Assembly of the United Nations adopted Resolution 48/163, proclaiming that the International Decade of the World's Indigenous Peoples would begin on December 10, 1994. The end of this Decade is fast approaching, and the Sub-Commission on the Promotion and Protection of Human Rights has already proposed to hold an international conference in 2003 to take stock of progress (2001/12).

2. It is worth acknowledging that some very significant steps have been made, such as the creation of a Permanent Forum on indigenous issues, and the nomination of a Special Rapporteur on the fundamental rights and freedoms of indigenous peoples.

3. However, the foremost aspiration of indigenous peoples, the indispensable tool for their collective survival, is still conspicuous by its absence. Despite the fact that the right that is considered the cornerstone of the human rights framework — the right to self-determination — is addressed in Article 1 of the covenants on civil and political rights and on economic, social and cultural rights: *"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."*

4. Even though experts in treaty-monitoring mechanisms have issued recommendations to Canada and Norway on the observance of Article 1 as it applies to indigenous peoples, (CCPR/c/76/add.105 and CCPR/c/79/add.112), this right remains to be recognized explicitly for indigenous peoples by the Member States of the United Nations, particularly those attending the Working Group created by resolution E/CN/RES/1995/32. While the right is enshrined in Article 3 of the current text of the draft Declaration on the rights of indigenous peoples, it has not yet been adopted, and its current wording: *"Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development,"* is still the object of bitter discussion.

5. The international community did not rise to the occasion at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. In fact, the conference's Declaration and Programme of Action replicate the international community's systematic refusal to recognize that indigenous peoples are in fact peoples, and that denying this fact is an act of discrimination.

6. In fact, while the term "people" is employed clearly throughout the Declaration and Programme of Action, Article 24 of the Declaration qualifies it with a safeguard that virtually divests it of meaning. The safeguard specifies that the use of the term "people" should in no way influence the outcome of discussions on the issue currently underway, and could not be interpreted as having implications for the rights attached to the term under international law.

7. Article 24 of the Declaration overshadows other highly important articles which describe the racism and discrimination that indigenous peoples have suffered and

continue to suffer, and which establish certain principles for the future.

8. These principles, which tie the end of discrimination to the full exercise of human rights, as set out in Article 40 (A/CONF.189/YY) of the Durban Declaration are impossible without recognition of peoples' foremost right, the right to self-determination.

9. Article 209 of the text negotiated in South Africa calls for speedy agreement on the text of the draft Declaration on the rights of indigenous peoples. It echoes Resolution 2001/12 of the Sub-Commission on the Promotion and Protection of Human Rights, which asks the participants of the Working Group, created by Resolution E/CN/RES/1995/32 of the Commission on Human Rights, to do everything in their power to accelerate the pace of work. This request must be highlighted and made an essential priority of the Commission on Human Rights.

10. There is still a considerable amount of work required to adopt the draft Declaration, and it is of the utmost importance for governments to make a special effort to understand that the recognition of all indigenous peoples' rights does not represent a threat to world peace. On the contrary, it is a factor of stability rooted in the obligation to negotiate.

11. It would be a shame to come to the end of the Decade and be forced to observe that governments still refuse to recognize that the rights stemming from peoples status under international law apply equally and without discrimination to indigenous peoples.

Therefore:

12. Rights & Democracy reaffirms its interest in the adoption of a Declaration on the rights of indigenous peoples, which explicitly recognizes their right of self-determination, before the end of the Decade dedicated to them, in conformity with Resolution E/CN/RES/1995/32 and with the full participation of indigenous representatives.

Rights & Democracy recommends that the Commission on Human Rights consider special measures aimed at accelerating the pace of work.

Permanent Forum on indigenous issues:

13. Rights & Democracy speaks as one with indigenous organizations and recommends that the Commission on Human Rights ensure that the United Nations provide the Permanent Forum with sufficient funds to create an independent technical secretariat.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written Statement* submitted by the International Centre for Human Rights and Democratic Development (Rights & Democracy), a non-governmental organization in special consultative status

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GE. *0020104 66*

ENG

Protecting Economic, Social and Cultural Rights in the Global Economy

1. The UN Development Programme estimates that one in five of the world's people – 1.2 billion – lives on less than a dollar a day. 56% of the developing world lacks the most basic sanitation and more than 50 countries have lower per capita incomes today than they did a decade ago. The UN Special Rapporteur on the Right to Food notes that 36 million people died of hunger or hunger-related disease last year alone. 800 million were chronically malnourished.

2. The Vienna Declaration and Programme of Action re-affirmed that "Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments". Further, the declaration emphasized the universality, indivisibility, interdependence and interrelationship of all human rights and fundamental freedoms as they are defined by the Universal Declaration of Human Rights (UDHR).

3. The UDHR is governed by two covenants sharing the same preamble. The preamble asserts that the "ideal of human freedom can be realized only if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights".

4. The proliferation of bilateral and multilateral agreements on trade and investment has subjected many areas of domestic social and economic policy to new forms of international regulation and adjudication. These agreements prioritize the rights of private interests by providing dispute resolution mechanisms which include binding decisions and punitive measures for non-compliance. No such protection is guaranteed to citizens or communities when the impacts of trade and investment policy negatively affect the progressive realization of their human rights, including economic, social and cultural rights.

5. Poverty and under-development are both violations of, and obstacles to, the realization of human rights. The increased fragility of economic, social and cultural rights in the context of globalisation is a violation of the Right to Development, described by the Independent Expert as the right to a particular process of development, in which "all human rights and fundamental freedoms can be fully realized". In the context of globalisation, economic policy formulated by the International Financial Institutions, the World Trade Organization and relevant regional bodies, must be consistent with, and supportive of the promotion and protection of human rights.

Justiciability of Economic, Social and Cultural Rights

6. Economic, social and cultural rights are not aspirational goals, matters of generosity, privilege or objectives to be achieved. Health, food, education and housing are human rights not market access opportunities. They are inherent rights as articulated in the *International Bill of Human Rights*. They imply obligations on the part of governments to respect, promote, protect and fulfil these rights.

7. Individuals and communities are entitled to claim their rights through judicial or legislative means when they believe that those rights have been violated. The right to an

effective remedy for the violation of rights is guaranteed in Article 8 of the Universal Declaration of Human Rights which states "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

8. Article 2 of the International Covenant on Economic, Social and Cultural Rights states that "Each State Party to the present Covenant undertakes to take steps... with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

9. The Limburg Principles on the Implementation of Economic, Social and Cultural Rights (formulated during an international symposium in Maastricht, Netherlands 1986), state that, "Although the full realization of the rights recognized in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable over time." The Principles elaborate further, "States parties shall provide for effective remedies including, where appropriate, judicial remedies."

10. Justiciability of Economic, Social and Cultural Rights requires the respect for civil and political rights, including an independent judiciary.

11. Standards on which the adjudication of human rights can be based, are provided within international covenants, treaties, conventions and declarations. Further, the Committee on Economic, Social and Cultural Rights has articulated standards which help to define the content of specific economic, social and cultural rights and set out criteria for their implementation both nationally and internationally. These general comments define the core content of rights, identify violations of specific rights and recommend framework legislation for the implementation for appropriate remedies to the violations of rights.

The Optional Protocol on Economic, Social and Cultural Rights

12. An Optional Protocol to the International Covenant on Economic, Social and Cultural Rights was originally proposed in 1990 to ensure the recognition and implementation of the rights guaranteed in the Covenant. The Protocol will provide a complaints procedure with respect to economic, social and cultural rights, thereby allowing individuals or groups to seek appropriate remedies for violations of their rights under the ICESCR.

13. The Vienna Declaration and Programme of Action (1993) adopted by consensus by 171 States, supports the adoption of an Optional Protocol as a means of redressing the imbalance between rights, clarifying the scope and meaning of provisions in the Covenant and establishing a body of case law to ensure improved compliance with those provisions.

14. Economic, social and cultural rights have been recognized as justiciable in various regional and other human rights treaties, such as the San Salvador Protocol to the American Convention on Human Rights, the Additional Protocol to the European Social

Charter and the African Charter on Human and Peoples' Rights, as well as the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). In addition, many countries have recognized economic, social and cultural rights as justiciable at the domestic level.

15. At its 57th session, the Commission on Human Rights adopted a resolution on the Optional Protocol. The resolution mandated an Independent Expert to examine the draft text circulated in 1996 and to submit his recommendations to the 58th session. The resolution also establishes the possibility of creating a working group to follow-up on these recommendations. The resolution was a positive and welcome step in the global campaign to establish the justiciability of economic, social and cultural rights.

RECOMMENDATIONS

1. The Commission on Human Rights must continue to support and encourage the work of the Sub-Commission on the Protection and Promotion of Human Rights in relation to Globalisation and its impacts on the ability of States to fulfil their obligations under the Covenant on Economic, Social and Cultural Rights. In this regard, adequate human and financial resources should be provided to the Sub-Commission and its rapporteurs on globalisation.

2. The Commission on Human Rights should encourage and facilitate increased collaboration between UN special rapporteurs, UN agencies governing development, food, education and culture and the Committee on Economic, Social and Cultural Rights.

3. The UN Conference on Financing for Development will address the systemic issues related to multi-lateral economic, financial and development assistance agreements. The Office of the High Commissioner for Human Rights should participate fully in this process, encouraging a human rights approach and promoting the primacy of international human rights obligations.

4. States should balance their obligations under the International Covenant on Economic, Social and Cultural Rights with obligations under international trade and investment agreements. The Commission should strengthen its efforts to increase the number of ratifications to the Covenant. States Parties to the Covenant should undertake activities which promote the usefulness of the General Comments prepared by the Committee on Economic, Social and Cultural Rights, acknowledging that they serve as non-binding interpretations of Covenant provisions.

5. The Commission should, as a matter of urgency, create an open-ended working group with a mandate to proceed towards the early adoption of the protocol. The Commission should provide a clear indication of the importance with which it views this initiative by securing adequate funds to enable the working group to conduct its activities in a timely and substantive manner. The Commission should ensure that the working group is provided access to the required technical expertise and administrative support necessary to pursue its mandate to its conclusion.

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Fifty-eighth session
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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Written Statement* submitted by the International Centre for Human Rights and Democratic Development (Rights & Democracy), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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*/ This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *0020104E*

ENG

The Situation of Women and Girls in Afghanistan

1. The human rights situation in Afghanistan, as revealed in the observations of Mr. Kamal Hossain, Special Rapporteur on the situation of human rights in Afghanistan (E/CN.4/2001/43; A/56/409 and A/56/409/Add.1) and those of the Secretary General on the situation of women and girls in Afghanistan (E/CN.4/Sub.2/2001/28), continue to be at a critical point in terms of violations of fundamental rights and humanitarian law. We acknowledge the laudable efforts of the Special Rapporteur and hope that his mandate will be renewed.

2. Under the Taliban regime, discrimination against women was systematic and massively widespread. Women's fundamental rights were persistently, cruelly, disproportionately and arbitrarily violated. The nature of the authorities, who exercised power without the participation and consent of the Afghan people, was the primary cause, to which can be added poverty, drought and war. In the territories controlled by the Taliban, this officially-approved discrimination against women adversely affected their personal safety, right to education and health care, free movement and freedom of association. The imposition of edicts by the authoritarian regime lead to inhumane and degrading punishment, kidnappings, forced marriages and trafficking in women and girls.

3. Further, all Afghan parties have committed grave violations of the human rights of women and girls.

4. We recall the Sub-Commission on Human Rights resolution on the Situation of women and girls in territories controlled by Afghan armed groups (E/CN.4/SUB.2/2001/28) and Security Council resolution 1325 (S/RES/1325(2000)) on Women, Peace and Security.

5. We also recall Security Council resolution 1386 (S/RES/1386 (2001)) which endorsed the Bonn Agreement (S/2001/1154) on provisional arrangements in Afghanistan pending the establishment of a broad-based, gender-sensitive, multi-ethnic and fully representative government for Afghanistan.

RECOMMENDATIONS

6. It is of capital importance that a peace and reconciliation process be instituted to ensure the security of civilians and lay the socio-economic foundations needed for the establishment of an environment respectful of fundamental human rights principles. In this regard, the Commission must urge the Security Council to extend the mandate of the International Security Assistance Force established by Security Council Resolution 1386 to the whole country and ensure that these peacekeeping forces engage in a process of demilitarization and demobilization of Afghanistan.

7. The Commission must urge a halt to all United States led military action in Afghanistan to ensure sufficient humanitarian assistance, without discrimination, to civilians in Afghanistan and Afghan refugees in neighbouring countries, including health care, shelter and food. Afghan women's organizations should be invited to participate in the delivery of such assistance.

8. It is essential that Security Council resolution 1325 be applied. In particular, that a gender perspective be incorporated into peacekeeping operations in Afghanistan. The role of women in the prevention and resolution of conflicts and peace-building in Afghanistan is central to the reconstruction of the country. The Commission should demand the full participation and full involvement of women in all efforts for the maintenance and promotion of peace and security in Afghanistan.

9. Long term strategies must be implemented to help the reconstruction of Afghan society and create sustainable change for women in Afghanistan. The Commission should encourage the United Nations, the international community, particularly donor countries and multilateral institutions to assist in the rehabilitation, recovery and reconstruction of Afghanistan. In particular, long term financial and logistical support should be provided to the new Women's Affairs Ministry of Afghanistan.

10. The Commission must demand that the new Afghan interim administration respect international treaties signed by Afghanistan and that urgent steps be taken to protect Afghan civilians and refugees, especially women, from violations of human rights and humanitarian law.

11. The Commission must immediately demand that the Afghan interim administration abrogate all edicts and cease all forms of discrimination against women that control their participation in civil, cultural, economic, political and social life. In particular, measures must be implemented to ensure respect for the rights of women to personal security, health, education and housing.

12. The Commission should encourage the drafting of a new constitution that would entrench women's human rights and equality for women and men in any future Afghan society.

13. Further, as an initial step towards accountability, the Commission must urge that the Secretary General appoint a commission of experts to gather evidence of past and current serious violations of international law, including war crimes and crimes against humanity committed in Afghanistan. The findings of this commission could lay the foundation for the establishment of short and long-term justice mechanisms such as criminal proceedings before an impartial tribunal whether national or international, or a truth commission.

14. It is also of primary importance that programs with the objective of psychological rehabilitation of women and their social reintegration be launched and funded by United Nations organizations in Afghanistan and Pakistan, as recommended by the Special Rapporteur on Violence Against Women in her report (E/CN.4/2000/68/Add.4). Women

must have equal access to the establishments necessary to protect and maintain their right to the highest possible level of physical and mental health.

15. To mitigate the consequences of complete segregation of men and women, a gender-specific perspective must be introduced in the selection of United Nations and other international organizations' personnel so as to ensure access by Afghan women. In this way, monitoring and evaluation of the promotion and protection of rights will reach the entire Afghan population. Moreover, the recruitment of qualified Afghan women, as much as possible, will ensure that these projects are completed in a satisfactory manner.

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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Written Statement* submitted by the International Centre for Human Rights and Democratic Development (Rights & Democracy), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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GE.*200201047 2*
ENG

The Judgement of The Women's International War Crimes Tribunal 2000 on Japan Military Sexual Slavery

1. On December 4th 2001, a new page of history was written when the Final Judgement of the Women's International War Crimes Tribunal of Japan's Military Sexual Slavery was delivered in The Hague. The judgement comes more than fifty-five years after the Japanese Imperial Army sexually enslaved over 200,000 women between 1932 and 1945.

2. In December 2000, the civil society of the Asia-Pacific region supported by international NGOs convened the Women's International War Crimes Tribunal as a response for the failure of states to discharge their responsibility to ensure justice. The Tribunal was established out of conviction that this failure could not silence the voices of survivors nor prevent accountability for crimes against humanity. These proceedings demonstrated that the institutionalisation of sexual slavery of girls and women was an integral part of the Japanese military campaigns.

3. Acknowledging that progress has been made toward recognizing and prosecuting crimes of sexual violence by the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), the Women's War Crimes Tribunal is another step towards ending impunity and ensuring that citizens understand law as an instrument of civil society.

4. The Women's War Crimes Tribunal Judgement is limited to exercising moral authority, it makes recommendations stemming from its legal findings and principles of rights and justice. The United Nations Commission on Human Rights 58th session can ensure that Member States of the United Nations serve the interests of the peoples of the United Nations by disseminating the Judgement of the Tokyo Tribunal 2000 and implementing recommendations of the Judgement. The recommendations are as follow :

« The Government of Japan must provide each of the following remedial measures :

1. Acknowledge fully its responsibility and liability for the establishment of the "comfort system", and that this system was in violation of international law.

2. Issue a full and frank apology, taking legal responsibility and giving guarantees of non-repetition.

3. Compensate the victims and survivors and those entitled to recover as a result of the violations declared herein through the government and in amounts adequate to redress the harm and deter its future occurrence.

4. Establish a mechanism for the thorough investigation into the system of military sexual slavery, for public access and historical preservation of the materials.

5. Consider, in consultation with the survivors, the establishment of a Truth and Reconciliation Commission that will create a historical record of the gender based crimes committed during the war, transition, and occupation.

6. Recognize and honour the victims and survivors through the creation of memorials, a museum and a library dedicated to their memory and the promise of "never again".

7. Sponsor both formal and informal educational initiatives, including meaningful inclusion in textbooks at all levels and support for scholars and writers, to ensure the education of the population and, particularly, the youth and future generations concerning the violations committed and the harm suffered.

8. Support training in the relation between the military slave system and gender inequality and the prerequisites for realizing gender equality and respect for the equality of all the peoples of the region.

9. Repatriate survivors who wish to be repatriated.

10. Disclose all documents or other material in its possession with regard to the "comfort stations".

11. Identify and punish principal perpetrators involved in the establishment and recruitment of the "comfort stations".

12. Locate and return the remains of the deceased upon the request of family members or close associates.

The Tribunal further recommended that the former Allied Nations :

1. Immediately declassify all military and governmental records concerning the establishment and operation of the "comfort" system and the reasons why it was not prosecuted before the International Military Tribunal for the Far East (IMTFE).

2. Immediately declassify all military and governmental records concerning the failure to prosecute the Emperor Hirohito before the IMTFE.

3. Acknowledge its own failures to investigate and prosecute the crimes committed against the former "comfort women" initially in the post war trials and since in the intervening 55 years.

The Tribunal further recommends that the United Nations and all the States thereof :

1. Take all steps necessary to ensure that the government of Japan provides full reparations to the victims and survivors and those entitled to recover on account of the violations committed against them.

2. Seek an advisory opinion of the International Court of Justice as to the illegality and continuing liability of the government of Japan in regards to the former "comfort stations". »

RECOMMENDATIONS

1. The Commission should seize the opportunity of the Women's International War Crimes Tribunal Judgement to remind Japan to do the honourable thing and recognize its state responsibility.

2. The international community could not render a better service to the victims and to Japan than to accept the Final Judgement of the Women's War Crimes Tribunal as an official document of the 58th session of the United Nations Commission on Human Rights.

3. As stated by the Judges of the Women's War Crimes Tribunal in The Hague on December 4, 2001 about the courage and the resolve of the survivors: "The crimes committed against these survivors remains one of the greatest unresolved injustices of the Second World War. There are no museums, no graves of the unknown "comfort woman", no education of future generations, and no judgement days, for the victims of Japan's military sexual slavery. Many of the women who have come forward to fight justice have died unsung heroes. While the names inscribed in history's pages are often those of the men that commit the crimes, rather than the women that suffer them, this Judgement bears the names of the survivors that took the stage to tell their stories, and thereby, for four days at least, put wrong on the scaffold and truth on the throne."

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COMMISSION ON HUMAN RIGHTS
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EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS: ADAPTATION AND STRENGTHENING OF THE UNITED NATIONS MACHINERY FOR HUMAN RIGHTS

Written Statement* submitted by the International Centre for Human Rights and Democratic Development (Rights & Democracy), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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GE. *200201047 5*

ENG

1. Human rights promotion and protection has always stood out as a principal mandate of the United Nations. The Secretary General's Millennium Report "We the People" highlighted that a large number of people around the world consider the promotion and protection of human rights to be among the most important tasks of the UN.

2. In recent years, there has been a dramatic upsurge in the number of States having adhered to international human rights instruments and an increased awareness of human rights issues. Accompanying this increased visibility is a growth in the number of special procedures, State reports and individual complaints submitted to the treaty bodies. However, the intensity of human rights violations in some parts of the world far exceeds the capacity of global institutions to prevent their recurrence and to effectively address their causes and consequences. The UN human rights mechanisms are struggling to react appropriately to existing human rights violations, let alone adopt the preventive strategy which would ultimately be their ideal role.

3. In response to the growing challenges and financial problems faced by the UN human rights mechanisms, Rights & Democracy, with the encouragement, cooperation and support of the UN High Commissioner for Human Rights, Ms. Mary Robinson, and her Office, convened a think tank discussion on "Strengthening the work of the UN on the protection and promotion of human rights: Financing the UN human rights mechanisms" in Ottawa, Canada, on June 15, 2001. The think tank was attended by over 60 individuals, including academics, non-governmental organizations (NGOs) and government representatives. Many proposals identifying the obstacles to the effective implementation of the UN human rights mechanisms and broadening their financial support were put forward.

Providing greater financial resources to the UN human rights system

4. Amongst those working in the field of human rights, a clear sense has emerged that funding for the UN human rights system is inadequate. At present, human rights work within the UN receives only approximately 1.5% of the UN regular budget. Such a low figure is inconsistent with the professed importance of human rights to the UN and the resources actually devoted to their realization. For 2002, the Office of the High Commissioner for Human Rights (OHCHR) sought, in its *Annual Appeal*, US$ 22,455,150 from the UN regular budget and an additional US$ 55,778,746 from voluntary contributions1. It is puzzling, to say the least, that such a significant UN body is forced to beseech donors for more than two thirds of the funds necessary for its operations.

5. First and foremost, what is required, is greater financial resources dedicated to the protection and promotion of human rights. It may be appropriate to recall that there have been requests to make available increased resources for human rights from the UN regular budget. In 1993, the World Conference on Human Rights requested that the Secretary-General and the General Assembly "take immediate steps to increase substantially the

1 OHCHR, *Annual Appeal 2002: Overview of Activities and Financial Requirements*, p.7.

resources for the human rights programme from within the existing and future regular budgets of the United Nations"2.

The financial situation of the UN human rights mechanisms can be significantly improved through increased contributions from the UN regular budget. Rights & Democracy believes that the procedure set out in General Assembly resolution 41/2133 regarding the financing of mandate activities and programmes must be applied.

6. Securing proper financing is not, in itself, enough. It is insufficient to simply demand more funds for human rights from the UN regular budget. We must not forget the big picture: the problem of the overall financial difficulties faced by the UN. The failure of some Member States to pay their dues in full, and on time, causes serious financial turmoil that reduces the capacity of the UN to act in a timely and effective manner. Therefore, for the UN to be in the forefront of the global effort to effectively promote and protect human rights, both resources and political will of its Members States are a necessity.

A simple solution to this problem would be to ensure that States fulfil their legal obligation under Article 17 of the UN Charter, and that membership dues are paid in full and on time, or that States with tardy or incomplete payments pay their outstanding dues immediately. It is also imperative that NGOs pressure recalcitrant States in international fora and increase public awareness in their respective countries on these issues.

7. The UN should also seek to diversify its funding sources as much as possible. There are other ways to amplify the resources and capacities of the UN human rights system that go beyond the options of increasing funding and enforcing Member States obligations. To this end, Rights & Democracy recommends to the OHCHR and to the Commission on Human Rights to:

(1) pursue with States, NGOs, and corporations an in-depth discussion to explore more seriously the possibility of innovative forms of funding;
(2) establish a general trust fund for voluntary donations for the support of all human rights activities undertaken by the Office;
(3) work to increase the monetary and in-kind contributions provided by civil society organizations to the UN human rights system;
(4) encourage the establishment of civil society partnerships with UN human rights mechanisms;
(5) propose in the biennium (2002-2003) regular budget specific projects that would encourage financial participation by NGOs, States and the private sector.

<u>Strengthening the effectiveness of the mechanisms</u>

8. The achievement of greater effectiveness in promoting human rights requires more than just additional financial resources. The UN human rights treaty bodies and special

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2 AG, *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/23, 12 July 1993, Part II, para. 9.
3 "Review of the efficiency of the administrative and financial functioning of the United Nations", 19 December 1986.

procedures are at the core of the international system for the promotion and protection of human rights. These mechanisms are unique among international human rights bodies and should be strengthened not weakened.

9. To ensure that the work of these mechanisms is not curtailed in any way, Rights & Democracy makes the following recommendations:

(1) The United Nations should continue to pursue with vigour its efforts to mainstream human rights and to ensure that the protection and promotion of human rights lie at the centre of its actions and programmes;

(2) Allocate more human resources to support the work of the treaty bodies and the special procedures;

Limited resources have imposed serious constraints on the activities of the special mechanisms, whose mandates cannot always be serviced as effectively and thoroughly as their importance would warrant. As noted by the High Commissioner in *her Annual Appeals* for 2001 and 2002, "while the number of special procedures mandates has grown, staffing and other resources to support the mandates have not increased in real terms, let alone proportionately to the increase in mandates"4. The UN system cannot be expected to mainstream human rights, as called for in the Secretary-General's report on UN reform, unless extra resources are made available.

Additional staff is required by the OHCHR to provide the necessary backup and support required by the treaty bodies and the thematic and country-specific mechanisms to ensure that mandate holders can respond to requests for action in a timely and effective manner. Such support is needed for travel, administrative work, research and training.

Rights & Democracy encourages all Member States to make generous financial contributions to the OHCHR to ensure better secretariat and other technical services to treaty bodies and special procedures.

10. The effective functioning of human rights mechanisms also requires the cooperation and assistance of all those involved in the process. Unfortunately, many governments act as though the protection of human rights ends with the ratification of relevant treaties. Many States neglect the continuing obligations that these treaties impose on them. Therefore, Rights & Democracy believes that UN Member States can dramatically contribute to the effectiveness of the human rights mechanisms by:

(1) complying fully with the obligations assumed under international human rights treaties;
(2) seriously taking into account and implementing treaty body recommendations;
(3) ensuring that reports to treaty bodies are submitted punctually;

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4 OHCHR, *Annual Appeal 2001: Overview of Activities and Financial Requirements*, p.25; OHCHR, *Annual Appeal 2002: Overview of Activities and Financial Requirements*, p.99.

(4) improving information about, and access to, individual complaints procedures;
(5) facilitating the visits of Special Rapporteurs and taking their recommendations into account;
(6) making efforts to ensure the independence of treaty body members.

12. The potential of NGOs assistance and support to the effectiveness of the UN human rights mechanisms has not been fully explored. Last year, the High Commissioner for Human Rights posed this question to the 57th Commission on Human Rights: "How can we tap in more to the immense resources of the NGO community and involve them more directly in the work of the UN?"5. Along with other members of civil society, NGOs have a vital role to play in ensuring that the UN can become a relevant instrument in a world of increasing complexity and live up to its guiding principles as stated in its founding document, the UN Charter, and the Universal Declaration of Human Rights.

13. There are many challenges facing the UN human rights mechanisms. With the assistance and cooperation of all those concerned, at the international, regional and national levels, the effectiveness of the human rights mechanisms can be strengthened and enhanced.

14. We urge the Commission on Human Rights to do everything in its power to ensure that greater resources and assistance are made available for better servicing of the treaty bodies and special procedures.

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5 *Statement by Mary Robinson, United Nations High Commissioner for Human Rights at 57th Commission on Human Rights* (Geneva: 19 March 2001), online: United Nations High Commissioner for Human Rights < http://www.unhchr.ch/huricane/huricane.nsf/NewsRoom?OpenFrameSet>.

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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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GE. *200201047 8*
ENG

Ethnic, religious and ideological discrimination in Indonesia

1. Although the Republic of Indonesia is now nominally a democracy and has ratified many of the major human rights conventions—including the Convention on the Elimination of All Forms of Racial Discrimination (CERD)—equal and just treatment for all citizens remains elusive. Legal sanctions are imposed against persons of Chinese descent, those practicing minority religions and those with allegedly communist ideology, among others. Indigenous peoples are deprived rights to land and self determination, while the central government makes policies affecting them without consultation.

2. Chinese Indonesians have long been a target for discrimination. The military has institutionalized their status through the Coordinating Body for Chinese Problems (BKMC), which still functions to this day. This system made possible the anti-Chinese killing, raping and destruction in May 1998 in Jakarta, Solo, Medan and other places. Though buildings destroyed in the riots are being rebuilt, the victims and their families are yet to see any justice in the form of compensation, and prosecution of the perpetrators.

3. Indigenous groups in Indonesia are also frequently discriminated against. Victims of long-term exploitation and displacement through the transmigration scheme, illegal logging and sale of resources to multinational mining companies, indigenous groups have sometimes resorted to violence to assert their basic rights. While this violence is unacceptable, it must be understood as the result of the continuous transfer of wealth from disenfranchised indigenous groups to economic and military powerbrokers.

4. Religious minorities are little tolerated in Indonesia. Persons belonging to religions other than those with official sanction do not enjoy rights to citizenship, marriage or expression of their beliefs. Military and armed civilian militia groups have exploited religious differences to gain power. The Christian and Muslim communities in Maluku lived in harmony for centuries before military interference in 1999, demonstrating how religious intolerance is inflamed for political and economic benefit. The criminal justice system continues to provide impunity for those inciting and perpetuating religious conflict in Maluku and Central Sulawesi.

5. Ideological discrimination is taken for granted in Indonesia. Since the destruction of the Indonesian Communist Party (PKI) by General Soeharto in 1965-66, communism has been banned. Those who suffered economic and social exclusion, imprisonment, torture and the murder of their family members are no closer to finding justice since his fall in 1997. Former President Wahid's call to remove the ban on communism met with a strong military-sponsored backlash, forcing him to drop the suggestion. Those responsible for the killing of at least 500,000 suspected communists in 1965-66 do not want to see their atrocities exposed to scrutiny, and the inaction of the Indonesian government in investigating and prosecuting this crime against humanity means that the discrimination is sure to continue. Worse, new 'anticommunist' groups have attempted to shut down any political, artistic, peasant, student, worker or non-governmental organisation thought to espouse left-wing ideology. Books have been burnt and shops forced to remove leftist titles. Groups researching the massacre and trying to give victims a proper reburial have been terrorised and forced into hiding.

6. Despite the appointment of the first female President in Indonesia and ratification of the Convention on the Elimination of Discrimination Against Women (CEDAW), women have not found their position advanced. The tiny representation of women in the parliament, military, police, judiciary and economic elite demonstrates the token nature of this appointment. Meanwhile, systemic rape and new forms of exploitation of migrant women workers from rural areas demonstrate the intensity of gender discrimination in

Indonesia.

7. A statement made by twenty Indonesian NGOs at the Tehran regional preparatory meeting for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance of 2001, observed that there are at least 62 pieces of racially directed legislation in Indonesia. The statement noted "that racism has its grip not only on the state apparatus, but also among the people themselves. Racism has become a culture of this nation." In keeping with the earlier colonial state, Soeharto's New Order regime used discriminatory laws to entrench its position. Despite Indonesia's accession to the CERD, virtually no legal changes have been made. Clearly, legislative reform is urgently needed: the 62 discriminatory acts must be removed, and the passage of anti-discrimination legislation expedited.

8. However even when legislation is on the side of those suffering discrimination, the dysfunctional criminal justice system fails persons seeking redress. In almost all cases, police, prosecutors and judiciary collectively protect the more powerful (the perpetrators), at the expense of the less powerful (the victims). This system is the product of three decades under military rule. Hence, the first and most vital step for change in Indonesia is demilitarisation. The military machinery's steady expansion since independence—through the introduction of Martial Law (1957), occupation of West Papua (1962), anti-Malaysia campaign (1963), eradication of between 500,000 and two million alleged communist sympathisers (1965-66) and the invasion of East Timor (1975)—must be curtailed. Yet while the fall of Soeharto meant that the military lost its benefactor, it has managed to maintain its position of strength through engineering or inflaming conflicts in Maluku, Central Sulawesi, West Papua and Aceh, as well as promoting ethnic and religious violence throughout Java and Kalimantan.

9. Since May 1998 the Indonesian military has been intimately involved in the conflagration of communal violence. Its involvement takes several forms, including sponsorship of civilian militias, direct combat and interference in the role of civil authorities to prevent the prosecution of those responsible for violence. The pro-Indonesia militias who killed between 1,000 and 2,000 people and razed East Timor during the period of the independence ballot in 1999 were directly organised, funded, trained, fed and transported by the Indonesian military. Likewise, the Laksar Jihad has been free to carry out training near army barracks and travel en masse to incite religious conflict in Maluku, North Maluku and Central Sulawesi. Christian militia, such as the Laksar Jesus militia in Halmahera, North Maluku, have also been allowed to form, arm themselves and organise violence against Muslims in these areas. The 'preman'—civilian youth gangs organised, funded and protected by the military—were used to initiate the May 1998 anti-Chinese riots, the Ambon religious conflict in November 1999, and many attacks on demonstrations by so-called 'leftist' groups seeking rights for peasants, workers, students and ex-political prisoners. Other areas subject to conflict instigated by or otherwise involving the armed forces since 1997 have included:
   - Selat Panjing–Riau, Sumatra (ethnic conflict)
   - Pontianak and Ketapang, Kalimantan (ethnic and racial conflict)
   - Sambas, Sanggau and Sampit, Kalimantan (ethnic conflict)
   - Makassar, South Sulawesi (ethnic and religious conflict)
   - Jakarta, Rengasdengklok, Bandung, Cirebon, Purwakarta, Tasikmalays, West Java (ethnic, racial and religious conflict)
   - Kebumen, Solo, Kudus, Central Java (ethnic, racial and religious conflict)
   - Situubondo, Sampang, East Java (ethnic and racial conflict)
   - Mataran, West Nusa Tenggara (religious conflict)
   - Sikka, East Nusa Tenggara (racial and religious conflict)
   - Freeport mine, West Papua (ethnic conflict due to loss of indigenous land)

10. The government has done nothing to stop these events, and has at the same time taken the approach of direct military conflict in the independence-seeking provinces of Aceh and West Papua, resulting in thousands of deaths, mostly civilian. It is clear that the size and influence of the military not only makes it impossible to reduce communal violence but in fact guarantee ongoing conflict.

11. The Asian Legal Resource Centre urges the cessation of government intervention in religious and ideological beliefs in Indonesia. To this end the government must:
    - Revoke discriminatory legislation and disband organisations such as the BKMC;
    - Introduce anti-discriminatory legislation and school curricula;
    - Engage in campaigns to promote plurality and counter xenophobia and intolerance;
    - Prevent exploitation of indigenous people; and,
    - Introduce positive discrimination programs to rectify the imbalance in opportunities faced by peasants, women, indigenous people and minorities in Indonesia.

Finally, all of these efforts will be futile unless the criminal justice system can be reformed to enable investigation and prosecution for past, present and future violence and injustice against discriminated communities. As stated at the 57th Session of the Commission by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Asma Jahangir, "It is clear that the deteriorating situation in many parts of Indonesia is directly linked to the Government's inability to investigate and prosecute members of its security forces for flagrant human rights violations." Along with substantial demilitarization, prosecution remains the key to building equality and justice and ending violent discrimination in Indonesia.

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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201048O*

ENG

Caste Discrimination in Asia

1. Caste-based discrimination, which takes place in a number of parts of the world, stipulates unequal social status based on birth. The largest segment of people discriminated by caste are in South Asia, but the Buraku people of Japan are treated similarly. Despite many condemnations of caste, it remains one of the most inhumane denials of human dignity. It not only violates various provisions of the Universal Declaration of Human Rights (UDHR): it goes to the heart of the notion of human rights itself. Whereas the notion of human rights presupposes equality, caste negates equality. Thus in dealing with this issue the international community should not treat it as just another problem, but as a fundamental challenge to the universality of human rights itself.

2. The Asian Legal Resource Centre welcomes the working paper by Mr. Rajendra Kalidas Wimala Goonesekere on the topic of discrimination based on work and descent submitted to the 53rd Session of the Sub-Commission on the Promotion and Protection of Human Rights in 2001 pursuant to Sub-Commission resolution 2000/4 (E/CN.4/Sub.2/2001/16), and also welcomes the 15 August 2001 decision number 2001/110 of the Sub-Commission at its 53rd Session to entrust Mr. Goonesekere with the preparation of an expanded working paper on the topic of discrimination based on work and descent in other regions of the world (E/CN.4/SUB.2/DEC/2001/110).

3. In spite of the above initiatives, sadly the international community has contributed little to the struggle for the elimination of caste. Perhaps one of the reasons is that modern western civilization cannot comprehend such a deep form of discrimination persisting into this era. Caste divisions have lasted for thousands of years and therefore have cemented habits of division among people. Even those given the task of eradicating caste discrimination through political power are themselves without choice victims of these divisions. Therefore, outside intervention should not only be welcomed but is also necessary.

4. International misunderstanding is contributed to by caste discrimination's concealed character, known only to those intimately associated with it in countries where it is practiced. Furthermore, the spokespersons for the upper castes enjoy an enormously privileged position compared to the so-called lower caste or outcaste representatives. The September 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) failed to effectively address and reach an international consensus on a position on regarding caste discrimination due to the efforst of these people. Notwithstanding, the issue drew much concern and publicity through the WCAR NGO Forum Declaration, which resolved:

> 84. Work and descent based discrimination, including caste discrimination and untouchability, being a historically entrenched, false ideological construct sanctioned by religion and culture, which is hereditary in nature and affects over 300 million people in the Asia Pacific and African regions at the personal, social and structural levels, irrespective of their religious affiliation;
>
> 85. The practice of untouchability, rooted in the caste system, stigmatises 260 million Dalits in South Asia as 'polluted' or 'impure', thereby denying them entry into places of religious worship, participation in religious festivals, assigning them menial and degrading work including cleaning toilets, skinning and disposal of dead animals, digging graves and sweeping, and the forced prostitution of Dalit women and girls through the traditional system of temple prostitution (Devadasi);
>
> 86. The system of 'Hidden apartheid' based on caste practices of distinction, exclusion and restrictions denies Dalits' enjoyment of their economic, social,

political, cultural and religious rights, exposing them to all forms of violence and manifests itself in the segregation of housing settlements and cemeteries, segregation in tea stalls ('two-cup' system), denial of access to common drinking water, restaurants, places of worship, restrictions on marriage and other insidious measures all of which inhibit their development as equals;

87. Caste discrimination and 'untouchability' practised against generations of Dalits for centuries together amounts to systemic 'generational and cultural Daliticide', which is the mass-scale destruction of their individual and collective identity, dignity and self-respect for generations through cultural methods and practices;

88. Any action or even any sign of an attempt to act by Dalits either individually or collectively to assert their rights is met with extreme measures of violence such as burning or destruction of their homes, property and crops, social boycott, rape or gang rape of Dalit women and murder by dominant caste individuals or groups, police or the bureaucracy, and that in such instances the State often acts with impunity and in connivance with these perpetrators;

89. Work and descent based discrimination against the Buraku people of Japan has existed for over 400 years and continues to be experienced today by over 3 million people in relation to marriage, employment and education, with new forms of discrimination emerging such as discriminatory propaganda and incitement to discrimination against them, especially on the Internet;

90. The vulnerability of the victims of work and descent based discrimination, including caste discrimination and untouchability, is aggravated by legal systems and law enforcement machinery that fail to protect them and hence are responsible for the continued perpetuation of discrimination, and by States that are themselves often the law-breakers.

5. Thus there exists a gulf between world public opinion, which is increasingly more articulate on behalf of those who suffer caste discrimination, and the international community, which has not yet dealt with this issue in any significant way. Accordingly, the Asian Legal Resource Centre urges all UN agencies—particularly the Office of the High Commissioner for Human Rights, Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights—to take a more proactive stance on the issue of caste-based discrimination, in keeping with the moral obligation owed to the victims of caste.

6. In March 2001 the Attorney General of India remarked, "It is undeniable that, despite constitutional and legal provisions, caste-based discrimination in our country persists and is pervasive and strong effective measures are needed to stamp out this evil". While other prominent persons have expressed similar views the problem is that the government has not spelled out necessary effective action. Although India has many laws against caste-based atrocities, these laws have been neglected. A major cause for the lack of their implementation is that the higher officers in charge of their implementation are very often from the upper castes. The Asian Legal Resource Centre submits that the Commission and other UN agencies have a legitimate interest in monitoring the implementation of these laws. The appointment of a special rapporteur for monitoring of the enforcement of laws against caste discrimination should not be seen as in any way hostile to the countries suffering from this problem. The appointment of a rapporteur would facilitate the flow of international support to improve the legal protection to those who suffer such discrimination.

Finally, in recent years the international community has discussed the issue of poverty eradication. The victims of caste discrimination in South Asia and elsewhere are among the poorest people in the world. International financial agencies engaged in poverty eradication should consider it a priority to assist those suffering caste discrimination. Where foreign debt is cancelled, available funds should be directed to uplifting those who suffer caste discrimination.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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GE. *0002010482*

ENG

Implementing article 2 of the ICCPR to ensure effective remedies for human rights violations in Asia

1. Failure to ensure effective remedies for violations of human rights is itself a basic violation of rights guaranteed under the International Covenant on Civil and Political Rights (ICCPR). Most neglected in this Covenant is article 2. In fact no agency or mechanism has consistently monitored the implementation of article 2. Nor is there a specific item on the agenda of the Commission for its discussion.

2. The neglect of article 2 may be related to the differences between remedies available in countries called 'developed democracies' and those falling outside this category. In a developed democracy, once ratification of a convention takes place its implementation can be ensured through the existing mechanisms of law enforcement. However, this is not the case in countries where the law enforcement mechanism itself is defective.

3. Most law enforcement mechanisms in Asia impede the implementation of effective remedies under article 2 of the ICCPR. In many countries criminal investigation systems are so fundamentally flawed that there are constant public complaints and the absence of faith in these institutions, such as in Pakistan, Nepal, Bangladesh, Cambodia and Indonesia. Sri Lanka is an extreme example of a totally collapsed system. Malaysia and Singapore are examples of countries that deny remedies by operation of "internal security acts" In Myanmar criminal investigations and prosecutions are totally controlled by the military regime. Even India, which in the past had a developed law enforcement system, has suffered greatly due to the operation of various anti-terrorism and internal security laws.

4. In ensuring effective remedies for violations of rights and thus the proper implementation of article 2, the prosecutor's function is very important. The absence of an independent prosecuting agency is a feature in several Asian countries. In China, Vietnam and Laos, despite many attempts to carry out legal reforms, the role of the independent prosecutor has not yet been recognized. In countries such as Pakistan, Nepal, Bangladesh, Cambodia and Sri Lanka, the independence of the prosecutor has been greatly undermined by higher political authorities. Concerning political issues, the prosecution systems in Malaysia and Singapore are also defective.

5. While there are many rhetorical condemnations of impunity, it is not often realised that without independent criminal investigation and prosecuting authorities it is not possible to overcome impunity. Impunity can safeguard itself through defective mechanisms even when there are laws against it. Typically what occurs is that after a violation takes place the criminal investigation authorities either do not pursue the matter at all, or do so unsatisfactorily. The prosecutor then claims that there is little or no evidence to act against the perpetrators. Even if under pressure the prosecutor takes the case to court, with insufficient evidence the perpetrators are released. In some instances the perpetrators then claim that their own human rights have been violated. Thus the absence of adequate criminal investigation and prosecution mechanisms creates a vicious circle in which the work of human rights organisations is defeated by the very legal mechanisms upon which they rely.

6. In recent times many Asian governments—under heavy pressure from the international community—have appointed governmental commissions or committees to look into violations of human rights. These are mostly bodies performing mere public relations exercises. Without addressing the basic defects of the criminal investigations and prosecutions mechanisms the work of these agencies does not produce any positive results in ensuring the implementation of article 2. Unfortunately the same observation is valid regarding most national human rights institutions in Asia.

7. Accordingly, the Asian Legal Resource Centre urges the international community to pay greater attention to problems relating to the implementation of article 2 of the ICCPR. It should facilitate studies and develop recommendations on this issue. Special financial and non-material support must be provided to countries to reform and develop their criminal investigation and prosecution mechanisms, to ensure proper implementation of article 2. The Asian Legal Resource Centre also urges all UN human rights mechanisms to pay special attention to article 2, particularly by ensuring proper criminal investigations and prosecutions. Those of particular relevance are the Special Rapporteur of the Commission on Human Rights on the question of torture, Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers and the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences. This issue is also very relevant to all groups working on economic, social and cultural rights, and the Independent expert of the Commission on Human Rights on the right to development. Finally, we urge all civil society organisations, international human rights groups and bodies involved in the promotion and protection of human rights to take special note of issues relating to the implementation of the article 2. Without it, much of the work they do will produce little or no result in altering the patterns of human rights violations, particularly in countries not falling within the category of developed democracies.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201048 4*

Food Scarcity in Myanmar

1. The right to food is a fundamental human right, guaranteed by the Universal Declaration of Human Rights [article 25(1)] and the International Covenant on Economic, Social and Cultural Rights (article 11). Notwithstanding, the right to food of people in the Union of Myanmar has been submerged by the military domination of that country. Substantial evidence suggests that the Government of Myanmar is systematically denying food to the civilian population through a range of practices implemented to ensure perpetuation of its undemocratic rule.

2. The Asian Legal Resource Centre brought these concerns to the attention of the Commission's fifty-sixth and fifty-seventh sessions (E/CN.4/2000/NGO/61, E/CN.4/2001/NGO/108), in light of findings made by the People's Tribunal on Food Scarcity and Militarization in Burma. The Tribunal's October 1999 report was also cited by the former Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/2000/38, paragraph 37; statement to the General Assembly of October 26, 2000). The Asian Legal Resource Centre appreciates the efforts of the former Special Rapporteur to highlight food security concerns in Myanmar and trusts that the new Special Rapporteur will pursue the issue with equal vigour, particularly given his recent expression of such intent to the General Assembly (9 November 2001).

3. The Asian Legal Resource Centre welcomes the first report by the Special Rapporteur on the right to food to the Commission's fifty-seventh session (E/CN.4/2001/53) and appreciates the Special Rapporteur's communication with the Government of Myanmar regarding food security concerns there (paragraph 58). The Asian Legal Resource Centre observes that by the three criteria the Special Rapporteur has established to determine the extent of fulfillment of the State's obligations regarding the right to food (paragraphs 26-30), the Government of Myanmar is presently failing to meet even one of these.

4. The People's Tribunal has recommended to the Government of Myanmar that it "address widespread food scarcity throughout the country by giving highest priority to food security as a basic human right". Regrettably, the Government has demonstrated unwillingness to alter its policies and practices exacerbating conditions of food insecurity. While the Government continues to assert that food scarcity does not exist in Myanmar, the Asian Legal Resource Centre has received regular and reliable independent reports to indicate the contrary. The Asian Legal Resource Centre remains convinced that the Government's failure to fulfill its obligations constitutes a breach of international law. The Government of Myanmar must be held responsible for the pervasive food insecurity there.

5. As outlined in the two previous submissions, the Government of Myanmar continues to violate the right to food through denial of the right to work, pernicious taxation, confiscation of land and repeated demands for unpaid civilian labour. It prevents or inhibits people from working freely to achieve their food security. Farmers are not permitted to choose when, where and how to cultivate. In areas of armed conflict they are subject to unstable life-threatening conditions that prevent them from using their labour, land and natural resources to earn a living. In other parts of the country, farmers are the victims of policies that place their own wellbeing after the interests of the state. Regardless of economic circumstances, civilian communities are obliged to satisfy demands for goods and services from the military.

6. Paddy farmers, the largest occupational sector of the country, are subject to a compulsory paddy-purchase programme enforced by Government agencies

nationwide. The quota is based upon the land-holdings of each farmer and without regard to actual production. Reports indicate rising paddy production and exports in 2000-01, however the People's Tribunal has stressed that food production does not in itself equate with food security, as "rice exports and growth in GDP [are] specious indicators of economic progress which belie Myanmar's daily hunger" (oral submission, 2000). The same may be said of other major export crops, notably beans and pulses. While statistics indicate increases in exports of these products, independent accounts in the second half of 2001 have alleged a dramatic shortage of edible oils and bean-related products in the domestic marketplace. Government newspaper articles have lent authenticity to these reports by urging consumers to "increase productivity while practising austerity" and reduce consumption of edible oils "for good health". Meanwhile, Government policies continue to emphasise expanded production directed towards export earnings, as distinct from rudimentary day-to-day food security concerns of most people in the country.

7. Reports in 2001 indicate that Myanmar's armed forces continue to be directly responsible for the most severe violations of the right to food. Counter-insurgency operations-especially in remote western and eastern regions-randomly destroy food stocks and crops, relocate civilian communities, and expropriate cash and materials. In some areas military operations directly target rural food supplies and crops without distinction, displace people from villages, scatter them into hills and jungles or force them into relocation sites. Widespread dislocation is resulting in serious and long-term structural food scarcity, not mere seasonal hunger due to occasional military incursions. Of particular concern are recent accounts of growing famine in parts of western Myanmar, where Muslim communities are subjected to a range of arbitrary punitive sanctions. In October 2001 even people in urban areas of Rakhine State are said to have been dying of starvation amid panic buying of rice after the outbreak of hostilities in Afghanistan, while simultaneously the illegal trade of rice into Bangladesh has rapidly increased.

8. The most recent report of the International Labour Office (GB.282/4, November 2001)-subsequent to a comprehensive mission to Myanmar by a High-Level Team-has concluded that the use of forced labour there continues, and that measures taken by the Government to address the Office's concerns have been inadequate. The Asian Legal Resource Centre reiterates that the right to food is intrinsically tied to rights to freedom of occupation and due recompense for work performed. The High-Level Team highlighted the self-reliance policy of the army and its budgetary shortfalls as significant factors contributing to forced labour practices (paragraphs 59-66)-both also important in the denial of food to civilian populations. Until the practise of forced labour is genuinely addressed so too will hunger and malnutrition remain a fact of life for people in Myanmar.

9. The right to food is universal and fundamental: it transcends national boundaries and claims of sovereignty. The international community and particularly United Nations agencies are without exception obliged to recognise the grinding man-made food security crisis in Myanmar. The Asian Legal Resource Centre again calls upon the Commission to respond urgently to food security concerns in Myanmar through the Special Rapporteur on the situation of human rights in Myanmar and the Special Rapporteur on the right to food respectively. Finally, the Asian Legal Resource Centre reiterates its call that an international commission be established to examine the hidden food security crisis in Myanmar before its already endemic proportions deepen into tragedy.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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GE. * 0 0 2 0 1 0 4 8 6 *

ENG

Milk prices in Sri Lanka

1. The rights to food and health are the most basic human rights. The right to food is codified in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Without ensuring the availability of adequate and nutritious food, it is difficult for the state to honour the right to health granted in article 12 of the same covenant. This truism was observed by the Special Rapporteur on the right to food, Jean Ziegler, in his report to the Commission of 7 February 2001 (E/CN.4/2001/53). Article 1 of the ICESCR also notes that "in no case may a people be deprived of its own means of subsistence". Furthermore, broadly interpreted, article 10 of the ICESCR pertains to violations of the right to food by states through inaction and complicity with multinational corporations. General Comment No. 12 of the UN Committee on Economic, Social and Cultural Rights, adopted in May 1999, reinforces these articles by emphasising accessibility to food as an integral component of the right. In his report the Special Rapporteur has also observed that the obligations of states to meet the right to food—which includes the right to liquid nourishment—are threefold: to respect, protect and fulfill. Regarding the second obligation the Special Rapporteur has noted that, "[States] must ensure that individuals and companies do not deprive people of permanent access to adequate and sufficient food. In most cases, access to food is a question of affordability, and therefore income."

2. In 2001 the Government of Sri Lanka—which ratified the ICESCR in 1980—breached articles 1, 10, 11 and 12 with regards to the rising cost of a staple food: milk. Approximately half the national population—about two million families—has been affected by the increasingly unaffordable milk prices. In a country where 1.8 million children are reported to be malnourished the consequences of this negligence cannot be ignored.

3. The milk price crisis is best appreciated by reflecting on the actual rise in the price of milk. In 1977, for instance, a 400-gram packet of milk cost 6 rupees (US$0.06). In 1994 it was 50 rupees (US$0.54). In 2001 it was as much as 119 rupees (US$1.28) for Nestlè's NIDO milk and 154 rupees (US$1.66) for Anchor's non-fat milk. Samurdhi—the official poverty alleviation programme in the country—has stated that two million Sri Lankan families earn less than 750 rupees (US$8.09) per month. The global standard for poverty, according to the World Bank, is US$1.00 per day per person, a standard that these two million Sri Lankan families fall woefully short of. A family with just one child under the age of 5 would have to buy about 10 packets of milk per month, at a cost of at least 1,000 rupees (US$10.78), to meet the child's nutritional requirements. Yet the cost of this basic commodity alone exceeds its average monthly income.

4. These prices are the result of combined government policies, the actions of multilateral organisations and free market economics. In April 2001 the Government of Sri Lanka was awarded a standby loan from the International Monetary Fund (IMF), the conditions of which included immediate tax increases and deregulation of the rupee. Subsequently the government raised the tax on milk to 19.5 percent, providing an incentive to support higher milk prices and thereby collect more tax. Meanwhile, the milk companies claim that one of the reasons they cannot lower prices is because of Sri Lanka's devalued rupee.

5. There are other historical reasons for Sri Lanka's exorbitant milk prices. About 20 years ago fresh, inexpensive milk was widely available. However in 1981 the government—under a policy of liberalisation and privatisation—closed the National Milk Board and signed an agreement with Nestlè to develop the dairy industry. The dairy industry was consolidated under four companies—Nestlè, Anchor, Laksprey and Maliban—all of whom show little sympathy for the plight of millions of families who cannot afford their milk products. The chairman of Nestlè Lanka has gone so far as to assert that it is improper to

ask for a reduction in milk prices. Bringing the issue to the attention of foreign diplomats in Sri Lanka, he has argued that the application of pressure to reduce milk prices is a violation of free market principles. Meanwhile, domestic dairy producers able to provide milk for the country prior to 1981 are no longer able to do so, and Sri Lanka has become dependent on foreign producers of milk.

6. In response, the Reduce Milk Prices Campaign, led by the Movement for National Land and Agricultural Reform and the Movement of Mothers to Combat Malnutrition, was inaugurated in June 2001. The Campaign now consists of 350 organisations from a broad spectrum of society, including farmer's organisations, fishery sector groups, women's organisations, trade unions, non-governmental organisations and human rights groups. Its proposals to reduce milk prices include the immediate removal of the 19.5 percent tax on milk and government intervention to break the existing monopoly on the importation and marketing of milk. It has called for the termination of all commercial advertising of milk products, which, the movement claims, would reduce milk prices by half. Lastly, it has called on the government to initiate a national policy to revive domestic dairy production and distribution. According to the Campaign, these actions would reduce the price of milk by nearly 70 percent.

7. Clearly both the government and milk cartel in Sri Lanka are in a position to reduce the price of milk and restore it to its status as a food necessary to maintain life and good health, rather a mere commodity with a financial benefit. The international community, through the Commission, must state very explicitly that life takes precedence over monetary rationales, and the value of life must be affirmed over money. Accordingly, the Asian Legal Resource Centre urges that:

- The Government of Sri Lanka immediately implement the recommendations of the Reduce Milk Prices Campaign.

- The Special Rapporteur on the right to food investigate this issue and make appropriate recommendations to the Government of Sri Lanka, the UN and milk companies, to ensure that the people of Sri Lanka, especially the nation's children, can enjoy their right to milk.